A TREATISE OF THE PRINCIPAL GROUNDS & AND MAXIMES OF THE LAWES

Of this Nation.

ery useful and commodious for all Students; and such others as desire the knowledg and understanding of the *Laws*.

Lex plus laudatur, quando Ratione probatur.

ritten by that most Excellent and Learned Expositor of the Law, *W. N.* of *Lincolns-Inn*, Esquire.

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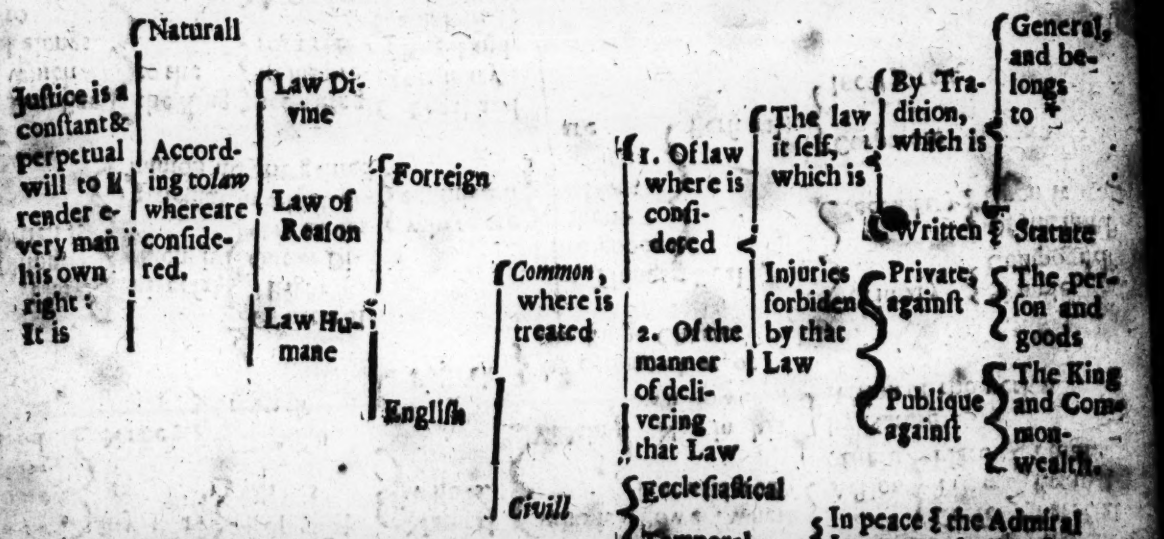
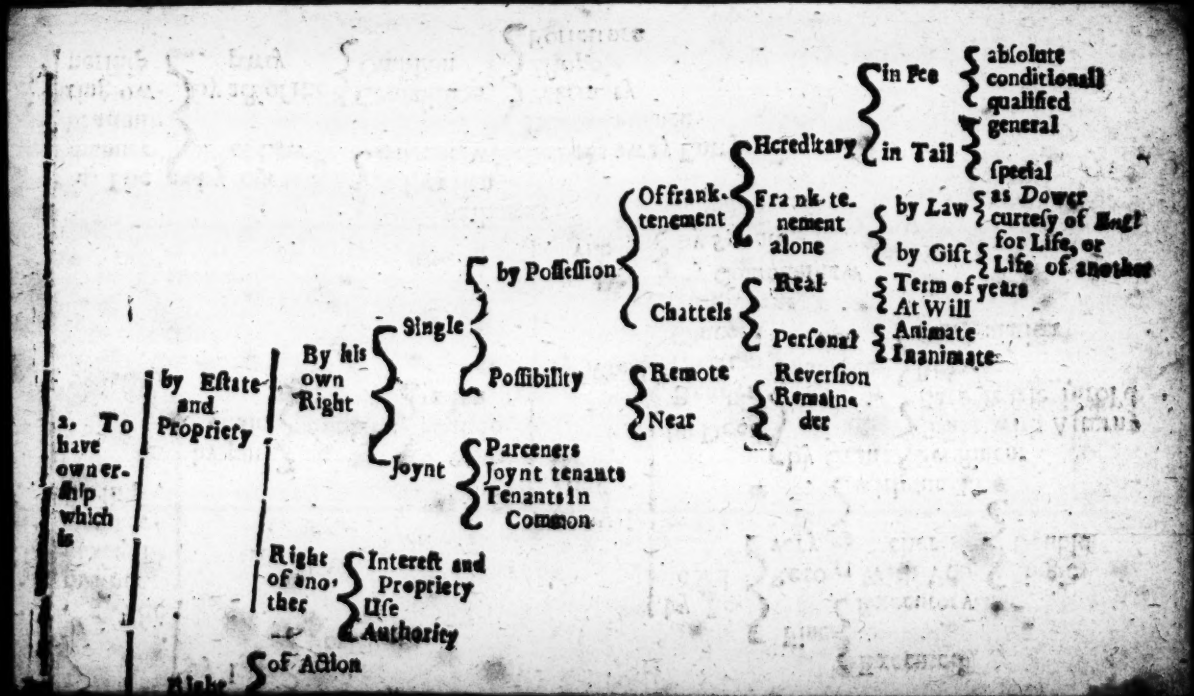
An Analysis of the Laws of *England*, by the honourable and most learned *William Noy* Esq; Attorny Gen: and of the privy Councel to the late King.



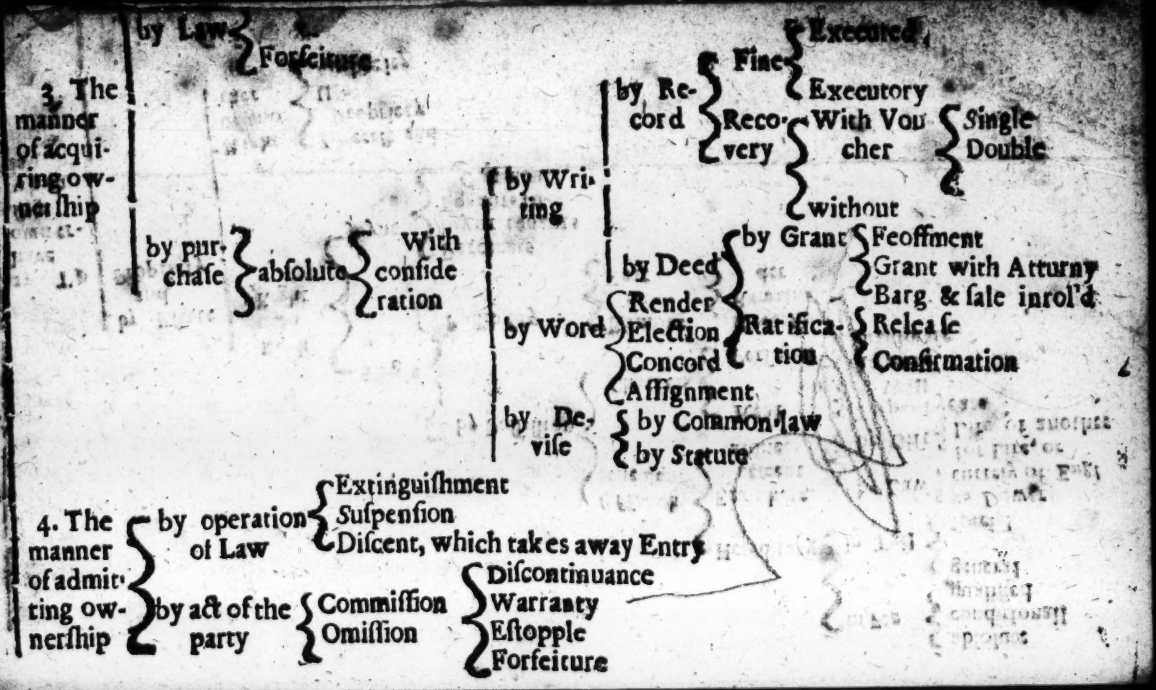
* The Person, wherein is considered
- The Quality; as
  - the King
  - the subject who is
    - Natural who is
      - Free who is
        - In his own Power, where is considered
          - Intention
          - Action there
            - Cause
              - Efficient
              - Material
              - Formal
              - Final.
            - Time
            - Place
        - Villain
          - Not in his own Power
            - by Nature
            - Action of the person
    - Politick by common law, or the Kings Charter
- Name
  - of Baptism
  - Creation

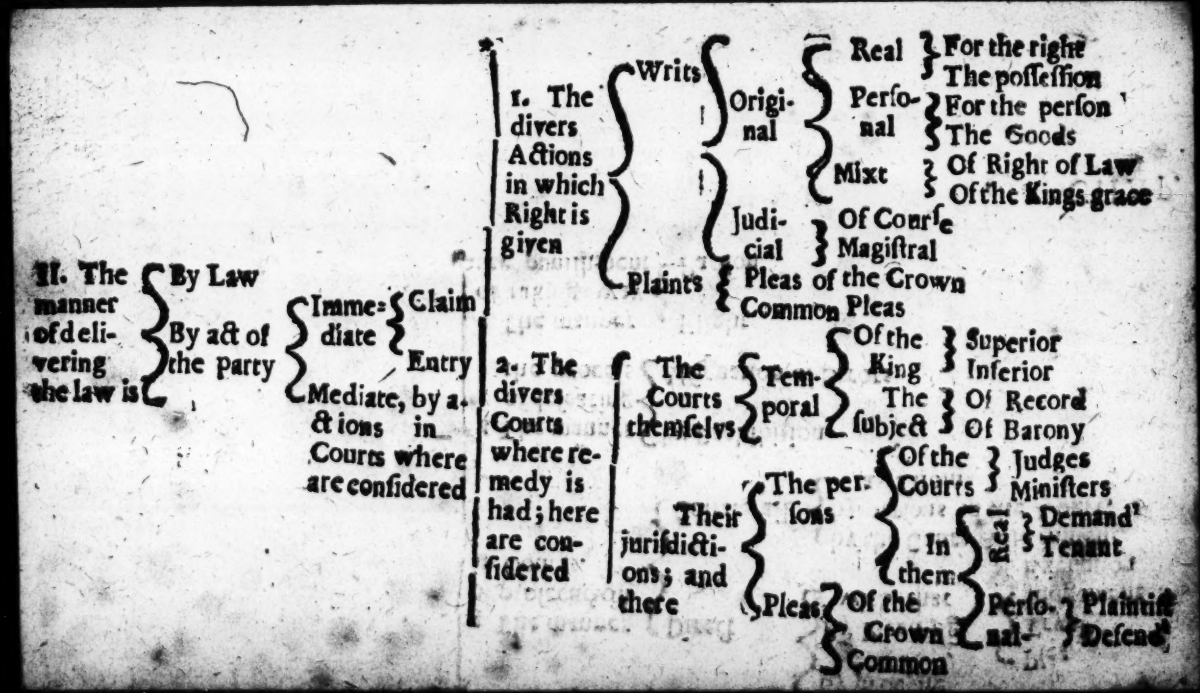
The Thing, which is
- universal which is
  - Of natural Right
  - Out of Divers causes
- Particular, in which dominion may be gained where are considered
  - 1. Things or goods themselves; which are
    - Real
      - Primary
        - Simple
        - Compound
      - Secondary
        - Of the land
        - Upon it
    - Personal
      - Corporate
      - Incorporate

Peculiar which belongs to
- the King to the
  - according to his prerogative
    - Legal and ordinary
    - Regal and absolute
- Subject
  - According to peculiar Custom of place
  - prescription of persons



- 2. To have ownership which is
  - by Estate and Propriety
    - By his own Right
      - Single
        - by Possession
          - Of frank-tenement
            - Hereditary
              - in Fee
                - absolute
                - conditionall
                - qualified
              - in Tail
                - general
                - special
            - Frank-tenement alone
              - by Law
                - as Dower
                - curtesy of Engl
              - by Gift
                - for Life, or
                - Life of another
          - Chattels
            - Real
              - Term of years
              - At Will
            - Personal
              - Animate
              - Inanimate
        - Possibility
          - Remote
          - Near
            - Reversion
            - Remainder
      - Joynt
        - Parceners
        - Joynt tenants
        - Tenants in Common
    - Right of another
      - Interest and Propriety
      - Use
      - Authority
  - Right
    - of Action


3. The manner of acquiring ownership
by Law
Forfeiture
by purchase
absolute
With consideration
by Writing
by Record
Fine
Executed
Executory
Recovery
With Voucher
Single
Double
without
by Deed
by Grant
Feoffment
Grant with Atturny
Barg. & sale inrol'd
Release
Confirmation
by Word
Render
Election
Concord
Affignment
Ratification
by Devise
by Common law
by Statute
4. The manner of admitting ownership
by operation of Law
Extinguishment
Suspension
Discent, which takes away Entry
by act of the party
Commission
Omission
Discontinuance
Warranty
Estopple
Forfeiture


II. The manner of delivering the law is
By Law
By act of the party
Immediate
Claim
Entry
Mediate, by actions in Courts where are considered
1. The divers Actions in which Right is given
Writs
Original
Real
For the right
The possession
Personal
For the person
The Goods
Mixt
Of Right of Law
Of the Kings grace
Judicial
Of Course
Magistral
Plaints
Pleas of the Crown
Common Pleas
2. The divers Courts where remedy is had; here are considered
The Courts themselves
Temporal
Of the King
Superior
Inferior
The subject
Of Record
Of Barony
Their jurisdictions; and there
The persons
Of the Courts
Judges
Ministers
In them
Real
Demand
Tenant
Personal
Plaintiff
Defend
Pleas
Of the Crown
Common

3. The manner of prosecution in Courts.
- Direct
  - By Pleading with that
    - Plea
    - Tryal
    - Judgement
    - Execution
- Collaterall
  - by the Court-Adjournment
  - by persons in the Court, as Essoin

4. The manner of defeating the process
- by Prohibition
- Assignation of Errors.

5. The manner of taking away the punishment
- Flight
- Pardon.

CHAP.

CHAP. I.

The Laws of England *are threefold; Common Laws, Cuſtomes, and Statutes.*

The Common Law.

THE Common Law is grounded on the Rules of Reaſon, and therefore we uſe to ſay in Argument, That Reaſon will that ſuch a thing be done, or that Reaſon will not that ſuch a thing be done; The rules of Reaſon are of two ſorts, ſome taken from Learning, as well Divine as Humane, and ſome proper to it ſelf onely.

Of Theologie.

1.

Summa ratio eſt, quæ pro Religione facit.

A Tenure to find a Preacher, if the Lord purchaſe parcel of the Land, yet the whole ſervice remaineth, becauſe it is for the advancement of Religion.

2.

Dies Dominicus non eſt juridicus.

Sale on a Sunday ſhall not be ſaid Sale in a Market, to alter the property of the Goods.

Of Grammer.

OF Grammer, the rules are infinite in th Etymologie of a Word, and in the con ſtruction thereof; what is nature, is ſingle.

3.

Ad proximum antecedens fiat relatio, ni impediatur Sententia.

As an inditement againſt *I. S.* ſervant *I. D.* in the County of *Middleſex* Butche *&c.* is not good; for ſervant is no Additio and Butcher ſhall be referred to *I.D.* whic is the next Antecedent.

Of Logick.

4.

Ceſſante cauſa, ceſſat effectus.

THe Executor, nor the husband, after t death of a woman Guardian in ſocca ſhall not have the Wardſhip, becauſe (*vi* the natural affection is removed which the cauſe thereof.

Some things ſhall be conſtrued accord to the original cauſe thereof.

5.

The Executor may releaſe before the p bate of the Will, becauſe his title and inte is by the Will, and not by the probate.

To make a man ſwear to bring me mony upon pain of killing, and he bringeth it accordingly, it is felony.

Outlawry in Treſpaſs, is no forfeiture of Land, as outlawry in felony is; for although the non-appearance is the cauſe of the Outlawry in both, yet the force of the Outlawry ſhall be eſteemed according to the heynouſneſſe of the offence, which is the principal cauſe of the proceſſe.

6.

According to the beginning thereof.

As if a Servant, which is out of his Maſters ſervice, kill his Maſter, through the malice which he bare him when he was his Servant, this is petty Treaſon.

7.

According to the end thereof.

As if a man warned to anſwer a matter in Writ, there he ſhall not anſwer to any other matter then is contained in the Writ, for that was the end of his coming.

8.

Derivativa poteſtas non poteſt eſſe major primitiva.

A Servant ſhall be ſtopped to ſay the

Frank-Tenement is belonging to his Ma-
ſter, by a recovery againſt his Maſter, al
though the Servant be a ſtranger to the Re-
covery; for he ſhall not be in better caſe
then he is in, whoſe Right he claimeth, or ju-
ſtifieth.

9.

Quod ab initio non valet, in tractu tempor non convaleſcit.

If an Infant, or a married woman, do mak
a Will, and publiſh the ſame, and afterward
dyeth, being of full age, or ſole, notwith
ſtanding this Will is void.

10.

Unumquodque diſſolvitur eo modo quo c ligatur.

An Obligation or other matter in writin
may not be diſcharged by an agreement b
word, but by writing.

11.

He that claimeth a thing on high, ſhall n ther have gain, nor loſſe thereby.

As if one Joynt-Tenant make a Leaſe
his Joyntee, reſerving rent, and die; t
Heir which ſurviveth ſhall have the Rever
on of his Joyntee, but not the Rent, becau
he cometh in by the firſt Feoffer, and not u
der his companion.

Also where the husband being leased for years in right, reserving a rent, the woman shall have the residue of the term, but not the rent. 27.

12.

Debile fundamentum, fallit opus.

When the estate whereunto the Warranty is annexed is defeated, the Warranty is also defeated. 27.

13.

Incidents may not be severed.

As if a man grant Wood to be burnt in such a house, Wood may not be granted away, but he which hath the house, shall have the Wood also.

14.

Actio personalis moritur cum persona.

As if battery be done to a man, if he that did the battery, or the other die, the Action is gone.

If the Leasor covenant to pay quit-rents, during the term, his Executor shall not pay it, for it is a personal covenant.

15.

Things of higher nature, do determine things of lower nature.

As matters of writing do determine an agreement by words.

If an offence which is murder at the Com
mon law, be made high Treason, no appe
lieth for it, for that the Murder is drowned
and punishable as treason, whereof no ap
peal lieth.

16.

Majus continet minus.

Whereby the Custom of a Manor, a ma
may demise for life, he may demise to h
Wife, *durante viduitate.*

17.

Majus dignum trahit ad se minus dignum.

As the Writings, the Chest or Box they a
in.

Of Philosophy.

18.

Natura vis maxima.

NAtural affection or brotherly love, a
good causes or considerations to rai
an use.

And one brother may maintain a suit f
another.

19.

The Law favoureth some persons.

Viz.

Men cu. of the Realm, or in Prison, W
me

men married, Infants, Ideots, Mad-men, men without intelligence, Strangers, that are neither parties, nor privy, and things done in anothers right.

A deſcent ſhall not take away the entry of a man out of the Realm, or in priſon, or of a married woman, or of an infant.

And a leaſe made to the husband and wife, after the death of the husband, the wife ſhall not be charged for waſte, during the marriage.

An Ideot ſhall not be compelled to plead by his Guardian or next friend, but ſhall be in the Court; and he that pleadeth the beſt plea for himſelf ſhall be admitted.

If a dumb man bring an action, he ſhall plead by his next friend.

If a Leſſee for years grant a Rent-charge, and ſurrendereth, the rent ſhall be paid, during the term, to the Stranger.

A man Out-lawed or Excommunicated, may bring an Action as an Executor.

20.

And a mans perſon before his poſſeſſions.

Mentioned of coporal pain, ſhall avoid a Deed, but not his Goods.

21.

And matter of poſſeſſion more then matter of right, when the right is equal.

As if a man purchaſe ſeveral lands at one time, held of ſeveral Lords by Knights ſervice, and dieth, the Lord which firſt ſeizeth the Ward, ſhall have it, otherwiſe his elder Lord.

22.

Matter of profit or intereſt ſhall be taken largely: and it may be aſſigned, and it may not be countermanded; but matter of pleaſure, truſt or authority, ſhall be taken ſtrictly, and may be countermanded.

As licence to him in my Park, or in my Garden to walk, extendeth onely to himſelf, and not to his ſervant, nor any other in his company; for it is matter of pleaſure only; otherwiſe it is of a licence to hunt, kill, and carry away the Deer, which is matter of profit.

A Church way is matter of eaſe.

Of Political.

23.

NOthing ſhall be void, which by poſſibility may be good; If Land be given to a man, and to a woman married to another man,

man, and the heirs of their two bodies, this is a preſent eſtate Tayle, becauſe of the poſſibility.

24.

Ex nudo pacto non oritur actio.

No man is bound to his promiſe, nor any uſe can be raiſed without good conſideration.

A conſideration muſt be ſome cauſe or occaſion which muſt amount to a recompence in Deed, or in Law, as mony, or natural affection, not long acquaintance, nor great familiarity.

25.

The Law favoureth a thing that is of neceſſity.

As to pay ſeveral Expences, ſhall not be ſaid to Adminiſter; to diſtrain in the night, dammage feaſant, to kill another to ſave his own life.

A Servant to beat another to ſave his Maſter, if he cannot otherwiſe chooſe.

To drive another mans cattel amongſt mine own, until I come to a place to ſhift them, is no Treſpaſs.

26.

And for the good of the Common-wealth.

As killing of Foxes, and the pulling down of an houſe of neceſſity to ſtay a fire.

27. *Com-*

27.

Communis error facit jus.

As an acquittance made by the Mayor alone, where there be a hundred presidents, is good.

28.

And things that are in the custody of the Law.

Goods taken by distress, shall not be taken in Execution for the debt of the owner thereof.

29.

The Husband and Wife are one person.

They cannot sue one another, nor make any Grant one to another: And if a Woman marry with her Obligor, the debt is extinct; and she shall never have any action, if another were bound with him; for by the mariage the Action is suspended; and an Action personal suspended against one, is a discharge to all.

30.

An Obligation with a condition to Enfeoff a woman before such a day, and before the day the Obligor taketh her to wife, the Obligation is forfeited, because he cannot Enfeoff her, but he may make a lease for years with a remainder to his wife.

When a joynt purchase is, during the mariage, every one shall have the whole.

When

When a joynt purchaſe, during the marriage, is made, and the Husband ſell; the Wife ſhall have a *Cui in vitâ* for the whole againſt both, and on a Feoffment made to one man and his wife, and to a third perſon, the third perſon ſhall have one moity.

31.

All that a Woman hath, appertaineth to her Husband.

Perſonal things, and things abſolutely reall, as Lands, Rents, and ſo forth, or Chattels real, and things in Action, are only in her right; notwithſtanding real things, & things in Action, he may diſpoſe at his pleaſure, but not Will nor charge them; and he ſhall have her real Chattels, if he ſurvive. Of things in Action, the Woman may diſpoſe by her laſt Will, and ſhe may make her Husband her Executor, and he ſhall recover them to the uſe of the laſt Will of his Wife.

If a Leaſſee for years grant his term to a Man, or Woman, and to another, they are joynt-Tenants; But if goods be given to her and to another, her Husband and the other are Tenants in common.

The Husband may releaſe an Obligation, or treſpaſs for goods taken when his Wife was ſole, and it ſhall be good againſt the Woman

man if he dy; but if he dy without making any ſuch Releaſe, the Woman ſhall have the Action, and not the Executor of her Husband.

The Woman ſurviving, ſhall have all things in Action; or her Executors, if ſhe dy.

The Husband ſhall be charged with the debts of his Wife but during her life.

32.

The will of the Wife, is ſubject to the will of her husband.

Note, a Feoffment made to the Wife, ſhe ſhall have nothing, if her Husband do not thereunto agree.

Moral Rules.

33.

THE Law favoureth works of Charity, Right, and Truth, and abhorreth fraud, coven and incertainties, which obſcure the truth; contrarieties, delayes, unneceſſary circumſtances, and ſuch like.

34.

Dolus & fraus una in parte ſanari debet.

No man ſhall take benefit of his own wrong; if a man be bound to appear at a day, and before the day the Obligee caſts him in priſon, the bond is void.

A

A Grant of all his woods in B. Acre, which may be reaſonably ſpared, is a void Grant, if it be not reſerved to a third perſon, to appoint what may be ſpared.

A Feoffment made in fee of two Acres to two men, *Habend.* one acre to one, and the other acre to the other; this *Habend.* is void.

35.

Lex neminem cogit ad impoſſibilia, &c.

The Law compelleth no man to ſhew that which by intendment he doth not know; as if a Servant be bound to ſerve his Maſter in all his commandements lawful, it is a good plea, to ſay, he ſerved him lawfully.

A Covenant to make a new Leaſe upon the Surrender of the old Leaſe, and after the Covenanter doth make a Leaſe by Fine, for more years to Eſtrange, the Covenant is broken, although the Leſſee did not ſurrender, the which by the words ought to be the firſt Act, for that the other had diſabled to take, or to make.

Law Conſtructions.

THE Law expoundeth things with equity and moderation, to moderate the ſtrictneſs; it is no Treſpaſs to beat his Apprentice with

with a reaſonable correction, or to go with a woman to a Juſtice of Peace, to have the peace of her Husband, againſt the will of her Husband, which equity doth reſtrain the generality, if there be any miſchief or inconvenience in it; As if a man make a Feoffment of his Lands in, and with Common, in all his Lands in *C.* the Common ſhall be intended within his Lands in *C.* and not in his other Lands he ſhall have elſe-where.

36.

Every Act ſhall be taken moſt ſtrictly againſt him that made it.

As if two Tenants in Common, grant a Rent of 10. ſhillings, this is ſeveral, and the Grantees ſhall have 20. ſhillings: but if they make a Leaſe, and reſerve 10. ſhillings, they ſhall have onely 10. ſhillings between them.

So an Obligation to pay 10. ſhillings at the feaſt of our Lord God, it is no plea to ſay that he did pay it, but he muſt ſhow at what time, or elſe it will be taken he paid it after the feaſt.

37.

He that cannot have the effect of a thing, ſhall have the thing it ſelf.

Ut res magis valeat quam pereat.

As if a Termor grant his Term, *Haben-*

dum

dum immediatè poſt mortem ſuam; the Grantee ſhall have it preſently.

38.

When many joyn in one Act, the Law ſaith it is the Act of him that could beſt do it, and that thing ſhould be done by thoſe of beſt skill.

As the Diſſeizee, and the Heir of the Diſſeizor, who is in by diſcent, joyn in a Feoffment; This ſhall be the Feoffment of the Heir only, and the confirmation of the Diſſeizee.

And the Merchant ſhall weigh the Wares, and not the Collectors.

39.

When two titles concur, the elder ſhall be preferred.

40.

By an acquittance for the laſt payment, all other Arrerages are diſcharged.

41.

One thing ſhall inure for another.

If the Leaſor Enfeoff the Leſſee for life, it ſhall be taken for a confirmation.

42. *In*

42.

In one thing, all things following ſhall be concluded, in granting, demanding, or prohibiting.

If one except a Cloſe, or a Wood, the Law will give him a way to it.

43.

A man cannot qualifie his own Act.

As to releaſe an Obligation until ſuch a time.

44.

The conſtruction of the Law may be altered by the ſpecial agreement of the parties.

If a houſe be blown down with the wind, the Leſſee is excuſed in waſte; but if he have covenanted to repair it, there an Action of Covenant doth ly by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment, ſhall be taken to the intent of the parties; and common intendment is not ſuch an intendment as doth ſtand indifferent, but ſuch an intent as hath the moſt vehement preſumption. All incertainty may be known

by

by circumſtances, every deed being done to ſome purpoſe, reaſon would that it ſhould be conſtrued to ſome purpoſe, and variance ſhall be taken moſt beneficial for him to whom it is made, and at election.

46.

An intendment of the parties ſhall be ordered according to the Law.

If a man make a Leaſe to a man, and to his heirs, for ten years, intending his heirs ſhall have it, if he die, notwithſtanding the intent, the Executors ſhall have it.

47.

Qui per alium facit, per ſeipſum facere videtur.

A promiſe made to the Wife in conſideration of a thing to be performed by her Husband, if he agree, and perform the Conſideration, in an Action of the caſe, he ſhall declare the Aſſumption was made to him.

And if my ſervant ſel my goods to another in debt, I ſhal ſuppoſe, he bought them of me.

CUSTOMES.

Consuetudo est altera lex.

CUstomes are of two sorts; General Customes in use throughout the whole Realme, called Maximes; and particular Customes used in some certain County, Citie, Town, or Lordship, whereof some have been specified before, and some follow here and where occasion is offered.

GENERAL CUSTOMES.

THe Kings Excellencie is so high in the Law, that no freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a sufficient authority to it self, and which is a Maxime, and which is not, shall alwaies be determined by the Judges, because they are known to none but to the learned.

A Maxime shall be taken strict.

A particular Custom, except the same be Record in some Court, shall be pleaded, and tryed by 12. men.

CHAP.

CHAP. II.

Statutes.

THe laſt ground of the Laws of *England* ſtandeth in divers Statutes made by our Soveraigne Lord the King and his Progenitors, and by the Lords Spiritual, and Temporal, and the Commons in divers Parliaments, in ſuch caſes where the former Laws ſeemed not ſufficient to puniſh evil men, and to reward the good.

Of general Statutes the Judges will take notice if they be not pleaded, but not of ſpecial, or particular.

All Acts of Parliament, as well private as general, ſhall be taken by reaſonable conſtruction, be collected out of the words of the Act only, according to the true intention and meaning of the maker

Four leſſons to be obſerved, where contrary Laws come in queſtion.

1. *The inferiour Law muſt give place to the ſuperiour*
2. *The law general muſt yield to the Law ſpecial.*
3. *Mans laws to Gods Laws.*
4. *An old law to a new law.*

And oftentimes all theſe Laws muſt be joyned together to help a man to his right; as if a man diſſeized, and the Diſſeizor made a Feoffment to defraud the plaintiff in this caſe, it appears that the ſaid unlawful entry is prohibited by the Law of Reaſon.

[But the Plaintiff ſhall recover double dammage, and that is by the ſtatute of 8. *H.* 6. And that the dammage ſhall be aſſeſſed by 12. men, that is, by the Cuſtom of the Realm, and ſo in ſome caſe, theſe three Laws do maintain the Plaintiff's right.

And theſe Laws concern either mens poſſeſſions or the puniſhment of offences.

And ſo much ſhall be ſufficient to be ſaid touching Common Law, Cuſtomes, and Statutes.

CONCERNING POSSESSIONS.

THE difference between Poſſeſſion and Seizin, is.

Leaſe for years is poſſeſſed, and yet the Leſſor is ſtill ſeized; and therefore the Terms of the Law are, that of Chattels a man is poſſeſſed; whereas in Feoffments, Gifts in Tayle, and Leaſes for life, he is called ſeized.]

CHAP.

CHAP. III.

Of poſſeſſion of Frank-Tenement.

TEnant in Fee-ſimple, is he which hath Lands, or Tenements to hold to him and his heirs for ever. It is the beſt inheritance a man may have; He may ſell, or grant, or make his will of thoſe Lands.

And if man hye, they do diſcend to his heir of the whole blood.

CHAP. IV.

FEE-TAYLE.

Fee-Tayle is, of what body he ſhall come that ſhall inherit.

Tenant in Tayle, is ſaid to be in two manners.

Tenant in Tayle General, and Tenant in Tayle Special.

GEneral Tayle is, where Lands or Tenements be given to a man, and his Wife, and to the Heirs of their two Bodies, or to his Heirs males, or to his Heirs females.

Tenant in Tayle is not puniſhable for waſte

Tenant in Tayle cannot Will his Lands, nor bargain, ſell or grant, but for term of his life, without a Fine, or recoverie.

If a man will purchaſe lands in Fee, it behoveth him to have theſe words, *Heires*, in his purchaſe.

If a man would grant Lands in Tayle, it behoveth him to appoint what body they ſhall come of.

Yet a deviſe of lands to a man and his heirs males, is a good intayl; and of lands to a man for ever, a good Free-Simple.

How Lands ſhall diſcend.

Inheritance is an eſtate which doth diſcend; it may not lineally aſcend from the ſon which purchaſeth in Fee, and dyeth, to his Father; but diſcendeth to his Uncle or Brother, and to his heirs, which is the next of the whole blood, for the half blood ſhall not inherit: But the moſt worthy of Blood, as of the blood of the Father before the Mother, of the elder Brother before the other, and born within eſpouſal.

A diſcent ſhall be intended to the heire of him

him which was laſt actually ſeized; That the Siſter of the whole blood, where the elder Brother did enter after the death of his Father, and not his Brother of the half blood, nor any other collateral Coſen ſhall inherit; yet notwithſtanding ſuch a one is heir to a common Anceſtor; in which Rule, every word is to be obſerved, and ſo in every Maxim, if the Land, Rent, Advowſon, or ſuch like do diſcend to the elder Son, and he die before any entry, or receit of the rent, or preſentment to the Church, the younger ſon ſhall have and inherit; and the reaſon is, becauſe that in all inheritances in poſſeſſion, he which claimeth title thereunto as heir, ought to make himſelf heir to him that was laſt actually ſeized.

Here the poſſeſſion of the Leſſee for years or of the Guardian, ſhall inveſt the actual poſſeſſion, and Frank-Tenement in the elder brother.

But he dying ſeized of a Reverſion, or a Remainder, or aireſtate for life, or in tayle; There he which claimeth the Reverſion, or remainder as heir, ought to make himſelf heir to him that had the Gift, or made the purchaſe.

Feodo excludeth an eſtate tayle, where the ſecond ſon ſhall inherit before the daughter.

And if the Lands be once ſetled in the blood of the Father, the Heir of the Mother ſhall never have them, becauſe they are not of the blood of him that was laſt ſeized.

And to the Heir of the blood of the firſt Purchaſer;

As if the Father purchaſe Lands, and it diſcendeth to the Son, who entreth, and dyeth without Heirs of the Fathers part, then the Lands ſhall diſcend to the Heirs of the Mother or Father of the Father, and not to the heirs of the Mother of the Son; although they are more neer of blood to him that was laſt ſeized, yet they are not of the blood of the firſt Purchaſer.

If the Heirs be females in equal diſtance as Daughters, Siſters, Aunts, and ſo forth, they ſhall inherit together, and are but one Heir, and are called Parceners.

Gavill-kinde.

Doth diſcend to all the Sons, and if no Sons, to all the Daughters: And may be given by Will by the Cuſtom.

CHAP

PARCENERS.

Parceners are of two ſorts.

Women and their Heirs by the Common Law.
Men by the Cuſtom.

THEY may have a Writ of partition, and the Sheriff may go to the Lands, and by the oath of 12. men, make partition between them, and the eldeſt ſhall have the Capital Meſſuage by the Common Law, and the youngeſt by the Cuſtom; where the parties will not ſhew to the Jury the certainty, there they ſhall be diſcharged in conſcience, if they make partition of ſo much as is preſumed and known by preſumptions and likelyhoods.

Parceners may by agreement make partition by Deed, or by Word, and the eldeſt firſt chooſe, unleſs their agreement be to the contrary.

Every part at the time of the partition muſt be of an even yearly value, without incumbrance.

Rent may be reſerved for equality or partition (and may be diſtrained for) without a Deed.

Parceners

Parceners by divers diſcents, before partition, being diſſeized, ſhall have one aſſize.

A Parcener before partition, may charge, or demiſed her part.

The entrie or Act of one Copartner, or joynt-Tenant ſhall be the act of both, when it is for their good.

If a Parcener after partition be entred, ſhe may enter upon her Siſters part, and hold it with her in Parcenary, and have a new Partition, if ſhe hold none of her part before ſhe was outed, *viz.* in exchange.

CHAP. VI.

Joynt-Tenants.

Joynt-Tenants be ſuch as have joynt eſtates in goods, or lands, where he that ſurviveth ſhall have all without incumbrance, if the Tenements abide in the ſame plight as they were granted.

Joynt-tenants may have ſeveral eſtates;

A Joynt-tenant cannot grant a Rent-charge, but for term of his own life.

A Joynt-tenant may make a Leaſe for life, or for years, of his part, or Releaſe, and the Leſſee for years may enter, although the Leſſor die before the Leaſe begin, and his heir

eir ſhall have the Rent, but the Survivor he Reverſion.

A Joynt-Tenant may have a Writ of partition by the Statute of the 31. of *H.* 8 *cap.* 32 A Partition made by Joynt tenants, or Tenants in Common of Eſtates of Inheritance, muſt be by Indenture, by Word 'tis void.

CHAP. VII.

TENANTS in COMMON.

Tenants in Common, are thoſe that hold Lands and Tenements by ſeveral titles.

They may joyne in action perſonal, but they muſt have ſeveral actions Real.

They may have a Writ of Partition by the Stat. of 31. H. 8. cap. 32.

IF one Parcener, Joynt-tenant, or Tenant in common take, all the other have no remedie, but by *Ejectione firme*, or ſuch like, or Waſte.

Gavil-kinde-Lands.

Tenant by the curteſie of *Kent*, whether he have Iſſue or no, untill he marry, and ſo forth, he may not commit waſte.

CHAP

CHAP. VIII.

TENANT in DOWER.

A Woman ſhall be endowed of a
ſorts of inheritance of her Husband
where the iſſue that ſhe had by him
may inherit, as Heir to his Father, by meete
and bounds of a third part.

She ſhall have houſe-room, and meat
and drink in common for forty dayes; Bu
ſhe may not kill a Bullock within thoſe 4
dayes, after the death of her Husband, t
which time her Dower ought to be aſſigne
her.

The Aſſignment by him that had the Frank
tenement is good, but by him that is Guar
dian in Soccage, or Tenant by *Elegit*, *ver*
Elegit, or Statutes, or Leſſee for years, is no

She is to demand her Dower on the Land

She ſhall recover dammages when her hus
band dyed ſeized, from the death of her hus
band; if the heir be not ready at the firſt da
to aſſign her Dower.

She ſhall have all her Chattels real again
except her Husband ſell them; he may no
charge them, or give them by his will; an
likewiſe her bonds, if the mony were due t
th

the life of her Husband, and all convenient apparel; but if she have more then is fit for her degree, it will be assets.

A Woman shall be barred of her Dower so long as she detaineth the body of the heir being Ward, or the Writing of the Sons Land.

A Woman shall not be endowed of any Lands that her Husband joyntly holdeth with another, at the time of his death.

Dower of Gavil-kind Lands.

If the Woman shall be endowed of one half so long as she is unmarried, and chaste, and it may be held with the heir in common.

It is of Lands and Tenements, and not of a Fair or such like; where the Heir loseth not his inheritance, there she loseth not her Dower.

Joynture.

IF a Woman have a Joynture before marriage, she may claim no Dower, 27. *Hen.* 8.

If it be made during marriage, she may enter into her Joynture presently.

If she enter, or accept of it, she shall not be endowed.

If she shall be expulsed of any part of her Joynture, she shall be endowed of the residue of her Husbands Lands.

CHAP

CHAP IX.

Tenant for terme of Life.

TEnant for terme of life, is he tha hath Lands or Tenements for term of his life, or another mans life an none of lesser estate may have a Free-hold

If a Tenant for life sow the Lands and die before the corn be reaped, his Executor shall have it, but not the Grass, nor other fruit.

If a Tenant for life be impanelled upon an Inquest, and forfeit issues and die, they shall be levied upon him in the Reversion; and so likewise if the Husband, on the Lands of the Wife.

CHAP. X.

Tenant for Terme of years.

Tenant for terme of years, is where a man letteth lands or tenements to another for certain years.

HE may enter when he will, the death of the Lessor is no let, and may grant away his term before it begin; but before he enter he cannot surrender, nor have any action of trespass, nor take a release.

He

He is bound to repair the Tenements.

The lessor may enter to see what Reparations or waste there is, and he may distrain for his rent or have an action of debt.

If Tenant for life or years granteth a greater estate then he hath himself, he doth forfeit his term.

CHAP. XI

Tenant at Will.

Tenant at Will is he that holdeth lands, or tenements at the Will of another

THe Lessor may reserve a yearly rent and may distrain for it, or have an Action of debt; the Lessee is not bound to repair the Tenements.

The Will is determined by the death of the Lessor, or of a woman Lessee by her maiage, or when the Lessee will take upon him to do that which none but the Lessor may do lawfully, it determineth the Will and possession, and the Lessor may have an action of Trespass for it.

The Lessee shall have reasonable time to have away his goods, and his corn; But he shall lose his Fallow and his dung carried forth.

CHAP.

CHAP. XII.
REMAINDER.

A Remainder is the reſidue of an eſtat at the ſame time appointed over, an must be grounded upon ſome parti cular eſtate given before; granted for years or for life, and ſo forth.

And ought to begin in poſſeſſion, when th particular eſtate endeth, there may be n mean time between; either by Grant or Will

No remainder can be of a chattel perſonal a Remainder cannot depend on a matter *poſt facto*, as upon Eſtate tayle, upon condi tion, That if the Tenant in Tayle ſell, the the Land to remain to another, is a void Re mainder.

CHAP. XIII.
REVERSION.

A Reverſion is the reſidue of an eſtat that is left after ſome particular eſtate granted out in the Grantor; as if a ma grant Lands for life, without further gran ing; the Reverſion of the Fee-ſimple is i the Leſſor.

CHA

CHAP. XIV.

WASTE.

WASTE lieth againſt a Tenant by the curteſie, for life, for years, or in Dower, and they ſhall loſe the place waſted, and treble dammages.

Waſte lieth not againſt a Tenant by *Elegit*, Statute-Merchant, or Staple; but account after the debt or dammage levied.

Waſte, or account will lie againſt a Tenant in Mortgage, becauſe he had fee conditionall.

Waſte is not given to the Heir for Waſte in the life of his Father.

Waſte is given againſt the Aſſigne of the Tenant for life, or of anothers life, but not againſt the Aſſignee of a Tenant in Dower, or of the curteſie, it is to be brought againſt themſelves.

It is Waſte to pull up the formes, benches, doors, windows, walls, Filbert-Trees, or Willows planted.

CHAP. XV.

DISCONTINUANCE.

DIſcontinuance is where a man that hath the preſent poſſeſſion, by making a larger eſtate then he may, diverteth the inheritance of the Lands or Tenements out of another, and dieth, and the other hath right to have them, but he may not enter, becauſe of ſuch alienation, but is put to his Writ.

If a man ſeized in the right of his wife, or if a Tenant in tayle made a Feoffment, and dyed, the Wife might not enter, nor the Iſſue in tayle, nor he in Reverſion, but are put to their action.

Now the wife may enter by the Statute, 32. *H.* 8. and a recovery ſuffered by the Tenant by curteſie, or by the Tenant after poſſibility of iſſue extinct, or for term of life, is now made no diſcontinuance.

Such things that paſs by way of a grant by deed without livery, and ſeizin, cannot be diſcontinued as a reverſion, or Rent-charge, Common, &c.

A Releaſe or Confirmation without Warranty, maketh no diſcontinuance.

CHAP. XVI.

DISCENTS.

DIſcents which take away Entries, is where a man diſſeizeth another, and dieth, and his Heir entreth, or maketh a feoffment to another in fee, or in taile, and he dieth, and his Heir entreth; theſe diſcents put a man from his Entry.

A diſcent, during minority, marriage, *non ſanæ mentis*, impriſonment, or being out of the Realm, do not take away an entry.

Diſcents of Rents in groſſe, the Lord notwithſtanding may diſtrain.

A dying ſeized of a term for life, or of a Remainder, or Reverſion, doth not take away an Entry, he muſt die ſeized in Fee, and Frank-tenement.

A diſeizin cannot be to one joynt-Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a diſcent, the Donor, Feoffer, or his Heirs may enter.

A wrongful diſeizin is no diſcent, unleſs the diſeiſor have quiet poſſeſſion five years without Entry, or claim, 32. *H.* 8.

CHAP. XVII.

CONTINUALL CLAIM.

CONtinuall Claim is a demand made by another of the property or poſſeſſion of a thing which he hath not in poſſeſſion, but is withholden from him wrongfully; defeateth a diſcent, hapning within a year and a day after it is made, and now by the ſtatute within five years.

CHAP. XVIII.

REMITTER.

REmitter is, when by a new title, the Frank-Tenement is caſt upon a man whoſe entry was taken away by a diſcent or diſcontinuance, he ſhall be in by the elder title; as if Tenant in tayle diſcontinue the tayle, and if after diſeizeth his continuance, and dieth thereof ſeized, and the land diſcend to his Iſſue, in that caſe he is ſaid to be in his Remitter, *viz.* ſeized his Ancient Eſtate tayle.

When the entry of a man is lawful, and he taketh an eſtate to himſelf, when he is of full age, if it be not by Deed indented, or matter

of Record which ſhall eſtop him, it ſhall be to him a good Remitter.

A Remitter to the Tenant ſhall be a Remitter to him in the Remainder, and Reverſion.

CHAP. XIX.

TENURES.

ALl Lands are holden of the King immediately, or of ſome other perſon, and therefore when any that hath Fee, dyeth without Heir, the Lands ſhall eſcheat to the Lord.

And they are holden for the moſt part either by Knights ſervice, or in Soccage.

Knights Service draweth to it Ward, Marriage, and Relief, *viz.*

Of Ward, Marriage, and Relief.

THE Heir male unmarried, ſhall be in Ward until 21. years of age.

If he be married in the life of his Anceſtors, yet the Lord ſhall have the profit of the land til his full age.

None ſhall be in Ward during the life of the Father.

If the heir refuse a convenient marriage, he shall pay to the Lord the value, when he cometh to full age.

If the ward marry against the will of the Guardian, he shall pay him the double value of his Marriage; but if the heir be of the full age aforesaid, he shall pay a relief.

A relief for a whole Knights Fee, is 5l for half a Knights Fee 50s. for a quarter 25s for more, more; for less, less, accordingly.

A Relief is no service, but is incident to a service, the Guardian must not commit Waste, *viz.* Chattels.

Tenure in Soccage.

TEnure in Soccage is, where the Tenant holdeth of his Lord by fealty, suit of court, and certain Rent for all manner of Service

The Lord shall not have the wardship, but a relief presently after the death of his Tenant.

A Relief for Soccage land, is a years rent, and is to be paid presently upon a discent or purchase. As if the land were held by Fealty, and 10s. rent *per annum*, 2s. shall be paid for Relief.

The next of the kin to whom the inheri-

tance

tance may not diſcend; ſhall have the wardſhip of the Land, and of the heir, untill his age of 14. years, to the uſe of the heir, at which age, the heir may call him to account.

If the Guardian dye, the heir cannot have an Action of account againſt the Executor of the Guardian.

The Executor of the Guardian may not have the wardſhip, but ſome other of the next of kin; the Husband may not alien the intereſt of the wife, in the Guardianſhip, nor hold it; if ſhe dye, it may not be ſold.

If another man occupy the Lands of the heir, as warden in Soccage, the heir may call him to account, as Guardian.

If the Guardian hold the Lands, after the heir is 14. the heir ſhall call him to account, as his Bailiff.

Gavil-kinde.

THe next of kin ſhall have the Guardianſhip of the body, and lands untill the heir be 15. years of age.

Diverſities of Ages.

A man hath but two Ages.

The full age of Male and Female is one and twenty.

A Woman hath ſix Ages.

THe Lord her Father may diſtrain for ayd for her marriage, when ſhe is ſeven. She is double at nine. She

She is able to assent to Matrimony at twelve
She shall not be in Warde, if she be fourteen
She shall go out of Warde at sixteen.
She may sell, or give her Lands at 21.

No man may be sworn in any Jury, before he be 21. before which age, all gifts, grants or deeds as do not effect by delivery of his own hands, are void, and all others voidable except for necessary meat, drink, and apparel, *&c.*

An infant may do any thing for his own advantage, as to be Executor, or such like; an infant shall sue by his next friend, and answer by his Guardian.

Gavill-kind.

The Heir may give or sell at fifteen years of age.

1. *The Land must discend, not be given him by Will.*
2. *He must have full recompence.*
3. *It must be by Feoffment, and livery of seizin with his own hands, not by Warrant of Attorney, nor any other conveyance.*

BY the Civil Law, an Infant may be Executor at 17. years of age.

An Infant may make a Will of his goods at 14. years of age, and a Maid at 12.

CHAP.

CHAP. XXI.

RENTS.

There are three manners of Rents.

Rent-Service.
Rent-Charge.
Rent-Seck.

RENT-Service is, where a man holdeth his lands of his Lord by certain Rent, and ſo forth.

Rent-charge is granted, or reſerved out of certain lands by Deed, with a clauſe of diſtreſs.

Rent-Seck, is a Rent granted without a diſtreſs: or Rent-Service, ſevered from other ſervice, becommeth a Rent-Seck.

The Reverſion of a Rent without a Deed, is void if the Reverſion be not in the reſervor; if a Rent be granted from the Reverſion, it is a Rent-Seck.

He which is not ſeized of a Rent-Seck, is wit hout remedy for the ſame.

The gift of a peny by the Tenant, in name of ſeizin of a Rent-Seck, is a good poſſeſſion and ſeizin.

No Rent may be reſerved upon any Feoffment, Gift, or Leaſe, but only to the Donor, and his heirs, not to any ſtranger.

A Rent-charge is extinct by the Grantee purchase of parcel of the Land, but by the purchase of any of his Ancestors it shall not, it shall be apportioned like Rent-service, according to the value of the Land; but if the whole Land discend of the same inheritance, the rent is extinguished.

By the grant of the Reversion, the rents and Services pass; If rent be granted to a man without more, saying, he shall have it for term of his life.

If the Lord accept of rent or service of the Feoffment, he excludeth himself of the Arrearages of the time of the Feoffment.

For a Rent-charge behind, one may have an Action of annuity, or distrain.

Distres.

For what, when, and where a man may distrain.

A man may distrain for a Rent-Charge, Rent-service, Herriot-service, and all manner of service, as

Homage.
Escuage.
Fealty.
Suit of Court.
And Relief, &c.

HErriot custom must be seized: and for Amerciaments, in a Leet, upon whose

ground ſoever it be in the liberty, a man may not diſtrain for rent, after the Leaſe is ended, nor have debt upon a Leaſe for life, before the eſtate of Frank-tenement be determined.

A man may not diſtrain in the night, but for dammage Feaſant.

A man may not diſtrain upon the poſſeſſions of the King, but the King may diſtrain of any Lands of his Grantee, or Patentee.

A man may not diſtrain the beaſts of a ſtranger that come by eſcape, untill they have been Levant, and Couchant on the ground, but for dammage Feaſans.

A man may not diſtrain the Oxen of the Plough, nor a Mil-ſtone, nor ſuch like that is for the good of the Common-wealth, nor a Cloke in a Taylors ſhop, nor victuals, nor corn in ſheaſes, but if it be in a Cart, for dammage Feaſans.

A diſtreſs muſt be always of ſuch things as the Sheriff may make a Replevin.

A man may not ſever horſes joyned together, or to a Cart.

If a man put cattel into a paſture for a week, and afterwards *I. N.* doth give him notice that he will keep them no longer, and the owner will not fetch them away, *I. N.* may diſtrain them dammage Feaſans.

If

If a man take beaſts dammage Feaſans, and driving them by the highway to a pound, the beaſts enter into the houſe of the owner, and the taker prayeth the delivery of them, and the owner will not deliver them: a Writ of Reſcous lyeth.

If a man diſtrain goods, he may put them where he will.

But if they periſh, he ſhall anſwer for them.

If cattel, they ought to be put in a common pound, or elſe in an open place, where the owner may lawfully come & feed them, and notice given to him thereof, and then if they dy, it is in default of the owner.

Cattel taken dammage Feaſans, may be impounded in the ſame land; but goods or cattel taken for others things may not.

Sheep may not be diſtreined, if there be a ſufficient diſtreſs beſides.

No man ſhall drive a diſtreſs out of the County wherein it was taken.

No diſtreſs ſhall be driven forth of the hundred, but to a pound Overt within 3. miles.

A diſtreſs may not be impounded in ſeveral places, upon pain of five pounds, and treble dammage.

Fees for impounding one whole Diſtreſs, Four pence.

The

The Executor or Adminiſtrator of him which had Rent or Fee-Farm in Fee, in Fee-tayle, or for life, may have debt againſt the Tenant that ſhould pay it, or diſtrain: and this is by the Statute 32. *H.* 8.

So may the Husband after the death of his Wife, his Executor, or Adminiſtrator. So may he which hath Rent for another mans life, diſtrain for the arrearages after his death, or have an action of Debt, 32. *H.* 8.

But if the Landlord will diſtrain the goods or cattel of his Tenant, and do ſell them, or work them, or convert them to his own uſe he ſhall be Executor of his own wrong.

CHAP. XXIII.

Diſeizin of Rents.

Three cauſes of Diſeizin of Rent-Service.

Reſcous.
Replevin.
Incloſure.

Four of Rent-Charge, Denyer, and incloſure.
Foreſtalling is a Diſeizin of all.

FOreſtalling is, when the Tenant doth with force, and armes, waylay, or threaten in ſuch manner, that the Lord dareth not diſtrain, or demand the Rent.

Denyall

Denyall is, if there be no diſtreſs on the Land, or if there be none ready to pay the Rent, *&c.*

And of ſuch diſeizins, a man may have an action of novell diſſeizin againſt the Tenant, and recover his Rent, and arrearages, and his dammage and coſts; and if the Rent be behind another time, he ſhall have a Rediſſeizin, and recover double dammage.

Reſcous, and pound-breach.

IF the Lord diſtrain when there is no Rent nor ſervice behind, the Tenant may not reſcue; otherwiſe if another diſtrain wrongfully; but no man may break the Pound, although he did tender amends before the cattel were impounded.

If the Lord come to diſtrain, and ſee the beaſts, and the ſervant drive them out of his fee, the Lord may not have Reſcous, becauſe he had not the poſſeſſion, but he may follow them, and diſtrain, but not dammage feaſans.

CHAP. XXIV.

COMMON.

COMMON is the right that a man hath to put his beasts to pasture, or to use, and occupy ground that is another mans.

There be divers Commons, *viz.* Common in gross, Common appendant, Common appertinant, Common, because of neighbourhood, *viz.* the terms of law.

The Lords of Wastes, Woods and pasture, may approve against their Tenants and neighbours with common appertenant, leaving them sufficient Common, and pasture to their Tenants.

As if one Tenant, surcharge the Common; the other Tenants may have against him a Writ *de admensuratione pasturæ*; But not against him that hath Common for beasts without number, neither may the Lord enclose from such Tenants: if he do, the Tenant may bring an assize against him, and recover Treble dammage, but the Lord may have a *quo jure*, and make the Tenant shew by what title he claimeth.

CHAP.

CHAP. XXV.

WAYES.

The Kings high-way is that which leadeth from village to village.

A common high-way is that which leadeth from a village into the fields.

A private way is that which leadeth from one certain place unto another, 3. Ed. 3.

IN the Kings high-way, the King hath only paſſage for himſelf and his people; and the Frank-Tenement, and all the profits are in the Lord of the foyl, as they be preſented at the Leete.

Of a common high-way, the Frank-Tenement and profits are to him that hath the land next thereto adjoyning, and if it be ſtopped, and I be damnified by it, I have no remedy, but by preſentment in the Leete.

If a private way be ſtraitned, or if a bridge there, which another ought to repair, be decayed, an action of the caſe lieth; But if the way be ſtopped, an Aſſize of Nuſance lieth and the Leſſee may have it after the Leſſor years begin, or the Leſſee may have an action of the caſe: if the moſt part of a Water way be ſtopped, an Aſſize will lie.

CHAP

CHAP. XXVI.

LIBERTIES.

A Libertie is, a royal priviledge in the hands of a ſubject.

ALL Liberties are derived from the Crown, and therefore are extinguiſhed if they come to the Crown again by eſcheate, forfeiture, or ſuch like, for the Greater doth drown the leſſer.

One may have Park a Leete Wayf, ſtray, wreck of Sea, and *tenura placitorum*, by preſcription, and without allowante in Eyre.

But not Cognizance of plea, nor *Catala fellonum, vel fugitivorum, aut ut lagatorum.*

A libertie may be forfeited by miſuſing, as to keep a market otherwiſe then it is granted

A Libertie may be forſeited for not uſing, when it is for the good of the Commonwealth; as not to excerciſe the Office of the Clark of the Market, but not to uſe a market is not.

Whatſoever is in the King, by reaſon of his prerogative, may not be granted, or pardoned by general words, but by ſpecial.

CHAP. XXVII.

Of Chattels Real.

Chattels Real, are Guardianships, Leases for years, or at will, &c.

GUardianship is a commodity of ha
ving the custodie of the body, o
lands or both, where the heir i
within age; and the Lord of whom the Lan
is holden, by Knights service shall have th
same to his own use; for it is a Chattel Re
all, and therefore his Executor shall have it

The Guardian must not do waste, nor in
feoff, upon pain of losing the Wardship
But he must maintain the building out of th
Issues of the Lands, and so restore it t
the heir.

If the Committee of the King commit, th
Wardship shall be committed to another; i
the Grantee, he shall lose the wardship.

And one of the friends of the Ward, being
his next friend that will may sue for him.

If a Lease be made to a man and his heir
for 20. years, it is a Chattell, and his Execu
tor shall have it; otherwise if a man Will
Lease to a man and his heirs, here the wor
Heirs

Heirs, are words of purchase, and his heirs shall have it.

If a man grant, *Proximam advocationem* to *I. S.* and his heirs, it is but a Chattel, for it is but for *unicâ vice.*

Writings pawned for money lent, are Chattels.

If a woman have execution of Lands by Statute-Merchant, and taketh a husband, he may grant it, for it is a chattel.

Of Chattels Personal.

CHattels Personal, are Gold, Silver, Plate Jewels, Utensils, Beasts, and other Chattels, and moveable Goods whatsoever; Obligations, and Corn upon the ground.

All goods as well moveable, as unmoveable, Corn upon the ground, Obligations, right of Actions, money out of bags, and corn out of sacks, *Sunt Cattala.*

Money is not to be passed by the grant of all his goods, and Chattels: nor Hawkes, nor Hounds, nor other things, *feræ naturæ.* for the property is not in any, not after they are made tame, longer then they are in his Possession; as my Hounds following me, or my man, or my Hawk flying after a foul, or my Deer haunting out of my Park; But if

they ſtray of their own accord, it is lawful for any man to take, and the heir ſhall have them.

All Chattels ſhall go to the Executors Fatts, and Furnaces fixed in a Brew-houſe, o Dy-houſe by the Leſſee; if they be fixed b Tenant in Fee, the heire ſhall have them,

Now ſomthing hath been ſaid concernin Poſſeſſions, it followeth, that it be ſhewe how they may be conveyed from one ma to another.

CHAP. XXVIII.

OF CONVEYANCES.

In every Conveyance, there muſt be a Gran tor, and a Grantee, and ſomthing grante The Conveyance of ſome perſons is void, others voidable.

CONVEYANCE of a Woman Covert void, without the conſent of her hu band, and it ought to be made in her and h name, except it be done as Executor to an other.

Of an Infant, that which doth not take e fect with the delivery of his own hands, void, and an Action of Treſpaſs will lie a gainſt him, for taking the things given.

Otherwi

Otherwiſe it is but voidable, except it be as Executor, or for neceſſary meat, and drink, *&c.* for his advantage.

Voidable. { Of *non ſanæ memoriæ*, or made by *dureſſe*, } Royal.

VOydable by the parties themſelves, and their heirs, and by them that ſhall have their eſtates, except *Non ſanæ* himſelf,

Grants by Fine.

VOydable by Writ of Error, by an Infant, during his nonage, and by the Husband for a Fine levied by his Wife alone, during their Marriage.

Conveyance of ſome perſons cannot be good for ever, without the conſent of others as the Deane without the Chapter; the Major without the Commonaltie, and of other bodies politick, that have a common Seale, or of a Parſon without the Patron and Ordinary.

If there be no condition in the Conveyance, it ſhall be intended the elder.

A Conveyance made to a female Covert, ſhall be good and of effect, until her husband do diſagree.

An Infant may be Grantee, ſo may a Woman Outlawed, a Villaine, a Baſtard, and a Fellon.

A Baſtard can have no heir, but the iſſue of his body lawfully begotten.

An Infant at the age of diſcretion, by his actual entry, and a woman againſt the will of her husband may be a diſſeiſor, or a treſpaſſor.

In all conveyances there muſt be one named, which may take by force the grant, at the beginning of the grant.

A Grant made to the right heirs of one that is dead, is good, or *Cuſtodibus Eccle.* is good for goods.

All Chattels, real or perſonal, may be granted, or given without a Deed,

Rent-ſervice, Rent-ſeck, Rent-charge, Common of paſture, or of Turbarie, Reverſion, Remainder, Advowſon, or other things which lieth not in manual occupation, may not be conveyed for years, for life, in tayl, or in Fee, without writing.

The major, or Commonalty, or ſuch like cannot make a Leaſe for years, without a Deed.

CHAP. XXIX.

Of Deeds.

Three things needfull, and pertaining to every Deed, Writing, Sealing, and Delivering,

IN the Writing must be shewed the persons names, their dwelling place, and degree. Things granted, upon what consideration, the estate, whether absolute, or conditional, with the other circumstances, and the time when it was done.

No grant can be made, but to him that was party to the Deed; except it be by way of Remainder.

The words must be sufficient in Law to bind the parties; as if a man grant *omnes terras certa sua*, a Lease for years passeth not, but for Frank-Tenement, at least, *nec per omnia bona sua.*

Exceptio semper ultimo ponenda est:

THE *Habendum* must include the premisses.

A Condition cannot be reserved, but by the Grantor, and it is proper to follow the *Habendum* presently.

The *Habendum*, or Condition must not be Repugnant

Repugnant to the premiſes, if it be, it is void, and the Deed will take effect by the Premiſes.

A Warrant is good, although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffors.

If it be raſed, or interlined in the Date, or in any material place, it is very ſuſpitious.

Of Sealing.

A Writing cannot be ſaid to be a Deed, if it be not ſealed, although it be written, and delivered, it as but an Eſcrowe.

And if it were ſufficiently ſealed, yet if the Print of the ſeal be utterly defaced the Deed is unſufficient, it is not my Deed.

It may not be pleaded, but it may be given in Evidence.

Of Delivery.

A Deed taketh effect by the Delivery, and if the firſt take any effect, the ſecond is void.

A Jurie ſhall be charged, to enquire of the delivery, but not of the date, yet every Deed ſhall be intended to be made, when it doth bear date.

Diverſitie

Diverſity in delivering of a WRITING.

As a Deed.
As Eſcrow.

THis Delivery ought to be done by the partie himſelf, or by his ſufficient Atturney, and ſo it ſhall binde him, whoſoever wrote, or ſealed the ſame.

If one be bound to make aſſurance, he need not to deliver it, unleſs there be one to read it to him before.

And if any writing be read in any other form to a man unlearned; It ſhall not be his Deed, although he Seal and deliver it.

There are two ſorts of Deeds.

A Deed Poll, which is the Deed of the Grantor, a Deed indented which is the mutual Deed of either parties; but in Law, one is the Deed of the Grantor, and the other the counter partie, and if any variance be in them, it ſhall be taken as it is in the Deed of the Grantor; and if the Grantor Seal only, it is good.

CHAP.

CHAP. XXX.

BARGAINS and SALES.

NO Mannor-lands, Tenements, or other Hereditaments can paſs, alter, or change, from one man to another, whereby an eſtate of Inheritance or Free-hold is made, or taketh effect in any perſon or perſons, or any uſe thereof is made, by reaſon only of any Bargain and Sale therefore, except the ſame be made by Writing indented, ſealed and inrolled in one of the Courts of Record at *Weſtminſter*, or within the ſame Court or County where the Tenements ſo bargained, do lye, before the *Cuſtos Rotulorum*, and two Juſtices of Peace, and the Clerk of the peace, or two of them whereof the Clerk of the peace to be one, and that within ſix months after the date of ſuch writing indented, 27. *H.*8.

The Inrollment ſhall be indented the firſt day of the Term, and ſhall have relation to the delivery of the Deed, againſt all ſtrangers.

CHAP

CHAP. XXXI.

FEOFFMENTS.

A Feoffment, is an estate made by delivery of Possession, and seizin by the party, or his sufficient Attorney.

A man cannot make livery of seizin, before he have the possession.

A Joynt Tenant cannot enfeoffe his Companion.

A Co-partner make a Feoffment of his part, or release.

A man cannot enfeoffe his Wife.

A Disseizor cannot enfeoffe the Disseizee; for his entrie is lawfull upon the disseizor.

Such persons as have possession in lands for years, or for life, &c. cannot take by livery and seizin of the same Lands.

IF a Feoffment be made, and the Lessee for years give leave to the Lessor to make Liverie and seizin of the premisses, saving himself to his Lease, *&c.* and he doth, the term is not surrendred; for the Lessee had an Interest which could not be surrendred without his consent to surrender, and here his intent to surrender doth not appear; wherefore he may enter, and have his term and the

rent

rent is renewed, but it is otherwiſe with a Leſſee for life, and the rent is extinct.

The Leſſor cannot make Livery and ſeizin againſt the will of the Leſſee being on the Land; But he may grant the Reverſion, and if the Leſſee do attorn, the Free-hold will paſs without Livery of ſezin.

Livery of Seizin.

LIvery of Seizin, is a ceremonie uſed in Conveyance of Lands, that the common people might know of the paſſing, or alteration of the eſtate; it is requiſite in all Feoffments, gifts in tayl, and Leaſes for life, made by deed, or without deed.

No Free-hold will paſs without Livery of ſeizin, except by way of ſurrender, Partition, or exchange, or by matter of Record, or by Teſtament.

Livery of ſeizin muſt be made in the life-time of him that made the eſtate.

Dona clandeſtina ſunt ſemper ſuſpitioſa.

BY Liverie of ſeizin in one County the Lands in another County will not paſs.

Livery within view, is good, if the Feoffee do

do enter in the life time of the Feoffor.

Livery may not be made of an eſtate to begin in *Futuro*, for no eſtate in Frank-Tenement may be given in *Futuro*, but ſhall take effect preſently, by Livery and Seiſin.

Of Uſes

THE Statute of of 27. *H.* 8. hath advanced uſes, & hath eſtabliſht ſurety for him that hath the Uſe againſt his Feoffees; for before the Statute, the Feoffees were owners of the Land, but now it is deſtroyed, and the *ceſtiaq;* Use is owner of the ſame; before the poſſeſſion ruled the Uſe, but ſince the uſe Governeth the poſſeſſion, Indentures ſubſequent be ſufficient to direct the Uſes of a Fine or Recovery precedent, when no other certain and full declaration was made before.

Attorney.

AN Attorney ought to do every thing in the name, and as the act of him which gave him the authority; as Leaſes in name of the Leſſor, but he muſt ſay, by vertue of his Letter of Attorney, I do deliver you poſſeſſion and ſeiſin of. *&c.* for, *&c.*

An Attorney muſt firſt take poſſeſſion before he can make Livery of Seiſin.

If an Attorney do make Livery of Seizin; otherwiſe

otherwise then he hath warrant then it is a disseizin to the Feoffer.

An Attorney must be made by writing sealed, and not by word.

CHAP. XXXII.

EXCHANGE,

In Exchange, both the estates must be equall, there must be two Grants, & in every grant, mention must be made of this word exchange. It may be done without Livery of Seizin, if it be in one Shire, or else it must be done by Indenture, and by this word Exchange, or else nothing passeth without livery.

EXCHANGE, importeth in the Law a Condition of Re-entry, and a Warranty voucher, and recompence of the other land that was given in Exchange; an Assignee cannot re-enter, nor vouch, but Rebate; Exchanger may re-enter upon an Assignee. And the same condition defeated in part is defeated in the whole, and the same law is in partition.

CHAP. XXXIII.

GRANTS.

GRants must be certain. A Grant to *I.S.* or *I. N.* is void for the incertaintie, although it be delivered to *I. S.* The delivery

very of the Deed will not make a void Grant good; or to take effect.

The Lord cannot Grant the Wardship of his living Tenant becauſe of the uncertainty who ſhall be his heir; unleſs he name ſome perſon.

When any thing is granted that is not certain, as one of my horſes, then the choice is in the Grantee,

When ſeveral things are granted, that it is in the choice of him that is to do the firſt Act.

A man cannot charge or grant that which he never had.

A man may charge a Reverſion.

A Parſon may grant his tythes, or the wool of his Sheep for years.

A thing in actions, a cauſe of a ſute, right of entrie, or a Title for a condition broken, or ſuch like, may not be given or granted to a Stranger; but onely to the Tenant of the ground, or to him that hath the Reverſion, or Remainder.

A thing that cannot begin without a Deed may not be granted without a Deed; as a Rent-Charge, Fayer, &c. Every thing that is not given by delivery of hands, muſt be paſſed by Deed; the right of a thing real or perſonal

ſonall may not be given in, nor releaſed by Word; a Rent of condition, or a re-entry may not be reſerved to one that is not partie to the Deed.

All things that are incident to others, paſs by the grant of them that they are incident unto.

A man by his Grant, cannot prejudice him that hath an elder title.

If no eſtate be expreſſed in the Grant, and Livery and ſeizin be made, then the Grantee hath but eſtate or life; But if there be ſuch Words in the Grant, which will manifeſt the Will of the Granter, ſo his will be not againſt the law, the eſtate ſhall be taken according to his intent and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome purpoſe, and therefore reaſon would they ſhould be conſtrued to ſome purpoſe.

All Grants ſhall be taken moſt ſtrong againſt him that made it, and moſt beneficiall to him to whom it is made.

To Grants of Reverſion, or of Rents, *&c.* there muſt be attornment, otherwiſe nothing paſſeth, if it be not by matter of Record.

Attornment

ATtornment is the agreement of the Tenant to the Grant, by writing, or by word; as to ſay, I do agree to the Grant made to you, or I am well contented with it, or I do Attorn unto you, or I do become your Tenant, or I do deliver unto the Grantee a peny, by way of ſeizin of a Rent, or pay, or do but one ſervice onely in the name of the whole; it is good for all.

It muſt be done in the life-time of the Grantor.

Without Attornment, a Signory, a Rent-charge, a Remainder, or a Reverſion, will not paſs, but by matter of Record.

Without Attornment, Services paſs not by the ſale of the Manor, nor from the Manor, but by bargain and ſale inrolled.

Attornment muſt be made by the Tenant of the Free-hold, when a Rent-charge is granted

By the Attornment of the Termor to the Grantee of a Reverſion, with Livery, and the Rent alſo, though no mention be made thereof; before attornment a man may not diſtrain, nor have any action of waſte.

By fine, the Lord may have the Wardſhip of the body, and Lands before the attornment of his Tenant.

The end of attornment, is to perfect

Grant, and therefore may not be made upon condition, or for a time.

A Tenant that is to perfect a Grant by Attornment, cannot consent for a time, nor upon a Condition, nor for part of a thing granted: But it shall enure the whole absolutely.

If the Tenant have true notice of all the Grant, then such Attornment is void.

Attornment necessary upon a Devise.

CHAP. XXXIV.

LEASES.

A Lease for years must be for a time certain, and ought to express the term, and when it should begin, and when it should end certainly; And therefore a Lease for a year, and so from year to year; during the life of *I. S.* but for two years, it may be made by word or writing; If I Lease to *I. N.* to hold untill a hundred pounds be paid, and make no livery of seizin, he hath Estate only at will.

A Lease from year to year, so long as both the parties please, after Entry in any year, it is a Lease for that year, *&c.* till warning be given to depart, 14. *H.*8.16.

A Lease beginning from henceforth, shall be accounted from the day of the delivery:

from

from the making ſhall be taken incluſive from the day of the making, or of the date excluſive.

If Lands diſcend to the heirs before his Entry, he may make a Leaſe thereof.

A man lets a houſe, *cum pertinent.* no lands paſs; but if a man let a houſe, *cum omnibus terris eidem pertinent.* there the lands thereunto uſed paſs.

If a man lets Lands, wherein is Coale-mines, quarries, and ſuch like, if they have bin uſed, the Tenant may uſe them, if they be not open, if the Tenant for them, imploy them not on the Land, it is waſte, likewiſe marle; the land is the place where the rent is to be paid and demanded, if no other place between the parties be limited.

Treſpaſs is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let Lands without impeachment of waſte, and a ſtranger cut down the trees, and the Leſſee doth bring an action of Treſpaſs, he ſhall not recover for the value of the trees, but for the Crop, and burſting of his cloſe, and the heir of the Leſſor ſhall have ſuch trees, and not the Executor of the Leſſee, unleſs they be cut by the Leſſee, and enjoyed by the Grantee, without waſte.

Leſſee for years, or for life, Tenant in Dower, or by the curteſie, or Tenant in tayle after poſſibility, *&c.* have onely a ſpecial intereſt or property in the trees, being upon the ground, growing as a thing annexed unto the Land, ſo long as they are annexed thereunto.

But if the Leſſee, or any other ſever them from the Land, the property and intereſt of the Leſſee in them, is determined, and the Leſſor may take them, as things that are parcel of his Inheritance, the Intereſt of the Leſſee being determined.

To accept the rent of a void Leaſe, will not make the Leaſe good; But avoidable it will.

If the Husband and Wife do purchaſe Lands to them and the heirs of the Huſband, and he make a Leaſe, and dy; his Wife may enter, and avoid the Leaſe for her life, but if ſhe dy, leaving the Husband, who afterward dyes, before the term ends, the Leaſe is good to the Leſſee, againſt the heir.

Where it is covenanted and granted to *S. I.* that he ſhall have five Acres of Land in *D.* for years, this is a good Leaſe, for *conceſſit* is of ſuch force as *dimiſit*.

If a man make a Leaſe for 10. years, and afterwards maketh another leaſe for 21 years, the latter ſhall be a good Leaſe for Eleven years, when the firſt is expired. If

If the Leſſee at his coſt, do put glaſs in the windowe, he may not take the ſame away again, but he ſhall be puniſhed for waſte; and ſo of wainſcot, and ſeeling, if it be not fixed with Screwes.

Tenant in tayle may make a leaſe for ſuch lands or inheritance, as have been commonly letten to farm, if the old leaſe be expired, ſurrendred or ended, within one year after the making of the new; But not without impeachment of waſte, nor above 21. years, or three lives, from the day of the making, reſerving the old Rent, or more, 32. *H.* 8. By Indenture of Leaſe, by Tenant in tayle, for 21. years, made according to the form of the Statute, rendring the ancient, or more Rent. If the Tenant in tayle die, it is a good leaſe againſt his iſſue; But if a Tenant in tayle die without iſſue; the Donor may avoid this Leaſe by Entry, 32. *H.* 8. 28. And if he in the Remainder, do accept the Rent, it ſhall not tie him, for that the tayle is determined, the leaſe is determined, and void. *Ed.* 6. 19.

The Husband may make ſuch a Leaſe of his Wifes lands by Indenture, in the name of the Husband and Wife, and ſhe to ſeal thereunto, and the rent muſt be reſerved to the Husband and his Wife, and to the heirs of the Wife, according to her eſtate of Inheritance.

A Leaſe made by the husband alone, of the Lands of his wife, is void after his death; But the Leſſee ſhall have his Corn.

By the husband and wife, voidable, if it be not made as aforeſaid.

If a man do let Lands for years, or for life, reſerving a Rent, and do enter into any part thereof, and take the profit thereof, the whole Rent is extinguiſhed, and ſhall be ſuſpended, during his holding thereof.

The acceptation of a re-demiſe, to begin preſently, is ſuſpenſion of the Rent, before any Entry; otherwiſe of a re-demiſe to begin *in futuro.*

Reſervations and Exceptions.

THere are divers words, by which a man may reſerve a Rent, and ſuch like, which he had not before, or to keep that which he had, as *Tenendum*, *reſervandum*, *ſolvendum*, *faciendum*, it muſt be out of a Meſſuage, and where a diſtreſs may be taken; and not out of a Rent: and muſt be comprehended within the purport of the ſame Word.

Exceptions of part ought alwaies to be of ſuch things which the Grantor had in poſſeſſion at the time of the Grant.

The Heir ſhall not have that which is reſerved

ſerved, if it be not reſerved to him by ſpecial words.

If a man make a Feoffment of Lands, and reſerve any part of the profits thereof, as the graſs, or the Wood, that reſervation is void, becauſe it is repugnant to the Feoffment.

A man by a Feoffment, Releaſe, Confirmation, or Fine, may grant all his right in the Land, ſaving unto him his Rent-charge, *&c.* Things that are given only by taking and uſeing: As paſture for four Bullocks, or two loads of Wood, cannot be reſerved but by way of Indenture, and then they ſhall take effect by way of Grant, of the Grantor, during his life and no longer, without ſpecial Words.

Exceptions of things, as Wood, Myne, Quarry, Marle, or ſuch like, if they be uſed, it is implied by the Law that they ſhall be uſed; and the things without which they cannot be had, is implied to be excepted, although no, *&c.*

But otherwiſe, if they be not uſed, then the way and ſuch like muſt be excepted.

An Aſſignee may be made of Lands given in Fee, or for life, or for years, or of a Rent-charge, although no mention be made of the Aſſignee in the Grant.

But otherwiſe it is of a promiſe, Covenant, or Grant, or Warranty.

If

If a Leſſee do aſſign over his term, the Leſſor may charge the Leſſee, or aſſign at his pleaſure.

But if the Leſſor accept of the Rent of the Aſſignee, knowing of the aſſignment, he hath determined his acception, and ſhall not have an action of debt againſt the Leſſee, for Rent due after the aſſignment.

If after the aſſignment of the Leſſee, the Leſſor do grant away his Reverſion, the Grantee may not have an action of debt againſt the Leſſee.

If a Leſſee do aſſign over his intereſt, and die, his Executor ſhall not be charged for rent due after his death.

If the Executor of a Leſſee do aſſign over his intereſt, an action of debt doth not lie againſt him for rent due after the aſſignment.

If the Leſſor enter for a condition broken, or the Leſſee do ſurrender, or the term end, the Leſſor may have an action of debt for the arrearages.

A Leaſe for years, vending rent, with a condition, that if the Leſſee aſſigneth his term, the Leſſor may re-enter. The Leſſee aſſigneth, the Leſſor receiveth the Rent of the hands of the aſſignee, not knowing of the aſſignment, it ſhall not exclude the Leſſor of his Entry.

A thing in a Condition may be aſſigned over for good cauſe, as juſt debt: as whereas a man is indebted to me 20. pounds, and another do ow him 20. pounds, he may aſſign over his Obligation unto me, in ſatisfaction of my debt, and I may juſtifie the ſuing for the ſame, in the name of the other, at my own proper coſts and charges.

Alſo where one hath brought an action of debt againſt *I. N.* which promiſeth me, that if I will aid him againſt *I. N.* I ſhall be paid out of the ſum, in demand I may aid him.

An Aſſignee of Lands, if he be not named in the condition, yet he may pay the mony to ſave his Land.

But he ſhall receive none, if he be not named; the tender ſhall be to the Executor of the Feoffees.

Aſſignee ſhall alwayes be intended, he that hath the whole Eſtate of the Aſſignor, that is aſſignable; a Condition is not aſſignable, and not of an Executor, or Adminiſtrator: if there be ſuch an aſſignee, the Law will not allow an aſſignee in the Law, if there be an aſſignee indeed; ſo long as any part of the Eſtate remaineth to the aſſignor, the tender ought to be made to him or his heirs, it ſerveth; yet a colourable payment to the heir, ſhall not veſte the Eſtate out of the aſſignee, as a true payment will, *viz.* Covenant,

CHAP.

If a Leſſee do aſſign over his term, the Leſſor may charge the Leſſee, or aſſign at his pleaſure.

But if the Leſſor accept of the Rent of the Aſſignee, knowing of the aſſignment, he hath determined his acception, and ſhall not have an action of debt againſt the Leſſee, for Rent due after the aſſignment.

If after the aſſignment of the Leſſee, the Leſſor do grant away his Reverſion, the Grantee may not have an action of debt againſt the Leſſee.

If a Leſſee do aſſign over his intereſt, and die, his Executor ſhall not be charged for rent due after his death.

If the Executor of a Leſſee do aſſign over his intereſt, an action of debt doth not lie againſt him for rent due after the aſſignment.

If the Leſſor enter for a condition broken, or the Leſſee do ſurrender, or the term end, the Leſſor may have an action of debt for the arrearages.

A Leaſe for years, vending rent, with a condition, that if the Leſſee aſſigneth his term, the Leſſor may re-enter. The Leſſee aſſigneth, the Leſſor receiveth the Rent of the hands of the aſſignee, not knowing of the aſſignment, it ſhall not exclude the Leſſor of his Entry.

A thing in a Condition may be assigned over for good cause, as just debt: as whereas a man is indebted to me 20. pounds, and another do ow him 20. pounds, he may assign over his Obligation unto me, in satisfaction of my debt, and I may justifie the suing for the same, in the name of the other, at my own proper costs and charges.

Also where one hath brought an action of debt against *I. N.* which promiseth me, that if I will aid him against *I. N.* I shall be paid out of the sum, in demand I may aid him.

An Assignee of Lands, if he be not named in the condition, yet he may pay the mony to save his Land.

But he shall receive none, if he be not named; the tender shall be to the Executor of the Feoffees.

Assignee shall alwayes be intended, he that hath the whole Estate of the Assignor, that is assignable; a Condition is not assignable, and not of an Executor, or Administrator: if there be such an assignee, the Law will not allow an assignee in the Law, if there be an assignee indeed; so long as any part of the Estate remaineth to the assignor, the tender ought to be made to him or his heirs, it serveth; yet a colourable payment to the heir, shall not veste the Estate out of the assignee, as a true payment will, *viz.* Covenant,

CHAP. XXXVI

SURRENDERS.

A Surrender is a an inſtrument teſtifying with apt words, that the particular Tenant of Lands, or Tenement for life, or years, doth ſufficiently conſent, that he which hath the next immediate Remainder, or Reverſion thereof, ſhall alſo have the particular Eſtate of the ſame in poſſeſſion; and that he yieldeth, or giveth the ſame to him for ever; Surrender ought forthwith to give a preſent poſſeſſion of the thing Surrendred unto him which hath ſuch an Eſtate, where it may be drowned.

A Joynt-tenant cannot ſurrender to his fellow.

Eſtating of things that may not be granted without a Deed, may be determined by the Surrender of the Deed to the Tenant of the Land.

Leaſe for years cannot ſurrender before his Term begin; he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners;

In *Deed.*

In *Law.*

A Surrender in Law, is when the Leſſee for years, doth take a new Leaſe for more years.

A Surrender in Deed, muſt have ſufficient words to prove the aſſent, and will of the Surrenderer to Surrender; and that the other do alſo thereunto agree.

The husband may Surrender his Wifes Dower for his life, and her Leaſe for ever.

By Deed indented, a man may Surrender upon condition.

CHAP. XXXVII.

RELEASES.

A Releaſe is the giving or diſcharging of a Right, or Action which a man hath or claimeth againſt another, or out of, or in his lands.

A Releaſe or Confirmation made by him that at the time of the making thereof had no right, is void; if a right come to him afterwards, unleſs it be with warranty, and then it ſhall barr him of all right that ſhall come to him after the warranty made.

Releaſe

Release, or confirmation made to him that at the time of the Release, or confirmation made, had nothing in the Lands, is void, it behoveth him to have a Free-hold or a possession and privity.

A Release made to a Lessee for years, before his Entry, is void.

A man may not release upon a Condition, nor for a time, nor for part; But either the Condition is void, and the time is void, and the Release shall enure to the party to whom it is made for ever, for the whole, by way of extinguishment: But a man may deliver a Release to another, as an Escrowe, to deliver to *I. S.* as his Act and Deed, if *I. S.* do perform such a thing, or release upon a condition by Deed indented, may be good.

A Joynt-tenant or a Rent-charge, may release, yet all the Rent is not extinct, nor yet if he purchase the Lands, his fellow shall have the Rent still.

If the grantee release parcel of a rent-charge to the Grantor, yet all the Rent is not extinct.

A Release to charge an Estate, ought to have these words, Heirs, or words to shew what Estate he shall have.

A Release made to him that hath a Reversion, or a Remainder in Deed, shall serve and help

help him that hath the Frank-tenement; So ſhall a Releaſe made to a Tenant for life, or a Tenant in Tayle, inure to him in the Reverſion, or Remainder, if they ſhew it, and ſo to Treſpaſſors and Feoffees, but not to Diſſeiſors.

A Releaſe of all manner of Actions doth not take away an Entry, nor the taking of ones Goods again, nor is any Plea againſt an Executor.

A Releaſe of all demands, extinguiſheth all Actions Reall and Perſonall, Appeals, Executions, Rent-charge, Common of Paſture, Rent-Service, and all Right, and Seizure, and all Right in Lands, and property in Chattels: But not a poſſibility, or future duty, as a Rent payable after my death, and ſuch like.

CHAP. XXXVIII.

CONFIRMATION.

Confirmation, is when one ratifieth the poſſeſſion, as by Deed to make his poſſeſſion perfect; or to diſcharge his eſtate, that may be defeated by anothers entry.

AS if a Tenant for life, will grant a Rent-charge in Fee, then he in the Reverſion may confirm the ſame Grant. Whereas

Whereas a man by his Entry, may defeat an Eſtate; there by his Deed of Confirmation, he may make the Eſtate good.

A Confirmation cannot charge an Eſtate that is determined by expreſſe Condition, or Limitation; To confirm an Eſtate for an hour, if it be for Tenant for life, it is good for life; if to Tenant in Fee, for ever.

A Leaſe for years may be confirmed for a time, or upon condition, or for a piece of the Land; But if a Frank-tenement be, it ſhall enure to the whole abſolutely,

A Confirmation to charge an Eſtate, muſt have words to ſhew what Eſtate he ſhall have.

To confirm the Eſtate of Tenant for life, to his heirs, cannot be but by *Habendum*, the Land to him and his heirs: And therefore it is good to have ſuch a *Habendum* in all confirmations.

In a Confirmation, new ſervice may not be reſerved, old may be abridged.

A Confirmation made to one Diſſeizor, ſhall be voidable to the other, ſo ſhal not a Releaſe

CHAP.

CHAP. XXXIX.

CONDITION.

There are two manner of Conditions, one expreſſed by Words, another implyed by the Law; the one called a condition in deed, the other, a Condition in Law.

ESTATE made, and the condition againſt the Law, the Eſtate's good, the Condition's void.

If the Eſtate beginneth by the Condition, then both are void.

Bonds with Conditions expreſly againſt the Law, are void.

Conditions repugnant, the eſtate good, the Condition void.

Conditions impoſſible, are void, the Eſtate good; it ſhall not enlarge any Eſtate.

By pleading, a man may not defeat an Eſtate of Frank-tenement, by force of a condition in Deed; without he ſhew the condition of Record, or in writing ſealed; yet the Jury may help a man, where the Judges will take their Verdict at large: of Chattels he may.

Promiſe doth make a Condition; but when it doth depend upon another ſentence, or hath reference to another part of the deed, it maketh no condition, but a qualification,

or

or limitation of the ſentence, or of that part of the Deed, as provided; that the perſon of the Grantee ſhall not be charged.

He which hath intereſt in a Condition, may fulfill the ſame for ſafeguard of himſelf.

Between the parties, it is not requiſite the Condition be performed in every thing if the other do agree, but to a ſtranger it muſt.

If the Obligee be party to any Act, by which the Condition cannot be performed; then the Obligor ſhall be diſcharged; So he ſhall be by the Act of the Condition.

Where the firſt Act in the Condition is to be performed by the Obligee, and he will not do it, there the Obligation is not forfeited.

Where no time is ſet, if the Condition be for the good of a ſtranger, or of the Obligee, then it is to be performed within convenient time, if for the good of the Obligor at any time during their lives; Immediately, ſhall not have ſuch a ſtrict conſtruction; but that it ſhall ſuffice, if it be done in convenient time.

If a man be bound to pay mony, or farm Rent, he muſt ſeek the parties. But if he be bound to perform all payment: if he render his farm on the Land, it ſufficeth.

If the Feoffee, or Feoffor die before the day of payment, the tender ſhall be to the Executor,

Executor, although the heir of the Feoffee do enter, if the heir be not named, *vide*, Assignee in assignment.

The mony must be tendred so long before Sun-set, that the receiver may see to tell it.

To pay part of a sum at the day, cannot be satisfaction for the whole sum, as a horse or a robe is. But before the day, or at another place, at the day of the request, and acceptance of the Obligee, is full satisfaction.

An Acquittance is a good barr, if nothing be paid.

In all cases of Conditions, a payment of a certain sum in gross, touching Lands, or Tenements, if lawfull tender be once refused, he which made the tender is discharged for ever.

And the manner of the tender, and payment shall be directed by him that made it, and not by him that did accept it, as that he paid the sum in full satisfaction, and that he accepted thereof in full satisfaction.

An Acquittance is a good bar, *&c.*

Where a man is bound to pay mony, to make a Feoffment, or renounce an Office, or the like, and no time is limited when he shall do it, then upon request, he is bound to perform it, in so short a time as he may.

But where the time is limited, if he do

refuſe before the day it is no matter, if he be ready to perform it at the day.

Where a Covenant or Condition is to marry or Enfeoff a ſtranger by ſuch a day; the refuſal of the ſtranger is no Plea, as that of the Obligee is; The Obligee is to be ready on the Land, at his own perill; a ſtranger muſt be requeſted: if he refuſe, the Obligation is forfeited, wherefore it is good to have theſe words, if the ſtranger do thereunto aſſent.

Entry.

THE Determination of an Eſtate is not effected before Entry.

When any perſon will enter for a Condition broken, he muſt be ſeized on the ſame courſe and manner he was when he departed from his poſſeſſion.

It behoveth ſuch perſons as will re-enter upon their Tenants to make a demand of the reht.

If the Leſſor demand before he die, his heir may enter.

If the Leſſor diſtrain, he may not re-enter.

The Leſſor may accept of the Rent, and yet re-enter: but if he receive the next rent he may not, for that eſtabliſheth the Leaſe.

Entry into one acre in the name of more, is good; it doth not extend into two Counties.

By the Entry of the Husband, the Frank tenement ſhall be in the Wife, and ſo of ſuch like.

In Gavill-kind Land, the Eldeſt Son only ſhall enter for the breach of a Condition.

Demand.

THE Land is the place where the Rent is to be paid and demanded, if there be no other place appointed.

And there the Leſſor himſelf, or his ſufficient Attorny, a little before Sun ſet, in the preſence of two or three ſufficient witneſſes, ſhall ſay, here I demand of *I. B* 10. l. due to me at the Feaſt of, *&c.* for a Meſſuage, *&c.* Which he holdeth of me in Leaſe by Indenture, *&c.* and there remain; the laſt day the Rent is due to be paid until it be dark, that he cannot ſee to tell the mony.

CHAP. XL.

WARRANTIES.

There are three manner of Warranties.

Lineal.
Collaterall.
By Diſcent.

WArranty Lineal, is where a man by his Deed bindeth him and his Heirs to Warranty, and dieth, and the Warranty doth diſcend to his iſſue.

Warranty Collaterall is in another line, ſo that he to whom it diſcendeth, cannot convey the title that he hath in the Teſtaments by him that made warranty.

Warranty by Diſſeizin, is where he which hath no right to enter, entreth, and maketh a warranty: this is by Diſſeiſin, and barreth not.

Lineal Warranty barreth him that claimeth Fee; and alſo Fee-tayle with aſſets in Fee; if he ſell, his Son may have a Formedon.

Collaterall Warranty is a bar to both, except in ſome caſes that be remedied by Statute, as Warranty by Tenement, by the curteſie, except he hath enough by diſcent, by the ſame Tenement.

Tenant.

In Dower, for life, not remedied, but do barr the Heir, and him in Reverſion.

A Warranty diſcendeth alwaies to the Heir at the Common Law, *viz.* the Eldeſt Son, and followeth the Eſtate, and if the Eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond Son in Gavillkind, although all the Sons ſhall be vouched, and not the Eldeſt alone. Yet he only ſhall be barred.

To

To plead a Warranty againſt him that made it, or his Heirs, is called a Rebutter.

Where Fee, or Frank-tenement is Warranted, the party ſhall have no advantage, if he be not Tenant.

Where a Leaſe for years is warranted, it ſhall be taken by way of Covenant, and good, if he be outed.

The Feoffor by the words *dedi & conceſſi*, ſhall be bound to warranty, during his own life.

CHAP. XLI.

COVENANTS.

COvenants are of two ſorts; expreſſed by words in the Deed, or implyed by the Law. A Covenant in Deed, is an agreement made by the Deed in writing, between two perſons to perform ſome things and ſealed: for no writ of Covenant is maintainable without ſuch a ſpecialty, but in *London*, &c.

When a Covenant doth extend to a thing in being parcel of the demiſe, or thing to be done by force of the Covenant is *quodãmodo*, annexed, or appertaining to the thing demiſed, and goeth with the land, it ſhall bind the aſſignee, if he be not named: as to repair the houſes,

houſes, it ſhall bind all that ſhall come to the ſame by the act of the Law, or by the act of the party.

But if the Covenant do concern the land, or thing demiſed in ſome ſort, the Aſſignee ſhall not be charged, although he be named; as to make a wall at another bodies houſe, or to pay a ſum of mony to the Leſſor, or to a ſtranger, but the Leſſee his Executors and Adminiſtrators ſhall be charged.

If the Covenant do extend to a thing that had no being, but to be made new upon the Land, it ſhould bind the Aſſignee, if he be named, becauſe he ſhall have the benefit of it.

If a man make a Leaſe for years, and the Leſſee covenanteth and granteth to pay, *&c.* to the Leſſor his heirs and aſſignes, yearly during, *&c.* ten pound, his Executors ſhall have it.

A Covenant in Law, upon a demiſe, or grant, the Aſſignee in Deed, or in Law may have a Writ of Covenant.

An Obligation to perform all Covenants and grants is forfeit on the breach of a Covenant in Law.

A Covenant in Law is not broken but by an Elder Title.

A Covenant in Law may be qualified by the mutual conſent of the parties.

CHAP.

CHAP. XLII.

How Chattels perſonal may be bargained, ſold, exchanged, lent, and reſtored.

A Contract is properly where a man for his mony ſhall have by the aſſent of another, certain goods, or ſome other profit at the time of the contract, or after.

In all Bargaines, Sales, Contracts, Promiſes, and Agreements, there muſt be *quid pro quo*, preſently, except day be given expreſly for the payment, or elſe it is nothing but communication.

If a man do agree for a price of wares, he may not carry them away before he hath paid for them, if he have not day expreſly given him to pay for them.

But the Merchant ſhall retain the wares until he be paid for them, and if the other take them, the Merchant may have an action of Treſpaſs, or an action of Debt for the mony at his choice.

If the bargain be that you ſhall give me ten pound for my horſe, and you do give me a penny in earneſt, which I do accept: This is a perfect bargain, you ſhall have the horſe by an action of the Caſe, and I ſhall have the mony by an action of Debt.

If I say the price of a Cow is four pounds, and you say you will give me four pounds, and do not pay me presently, you may not have her afterwards, except I will; for it is no contract. But if you go presently to telling of your mony, if I sell her to another, you shall have your action of the Case against me.

If I buy an hundred loads of Wood to be taken in such a Wood at the appointment of the vendor, if he upon request will not assign them unto me, I may take them, or I may sell them: But if a stranger do cut down any part of the trees, I may not take them; But I may supply my Grantee of the residue, or have my action of the Case.

If the bargain be, that I shall give you ten pounds for such a Wood, if I like it upon the view thereof, this is a bargain at my pleasure upon my view; and if the day be agreed upon, if I dilagree before the day, if I agree at the day the bargain is perfect, although afterwards I do disagree. But I may not cut the Wood before I have paid for it; if I do, an action of Trespass will lie against me, and if you sell it to another, an action of Trespass on the Case will lie against you.

If I sell my horse for mony, I may keep him until I am paid, but I cannot have an action of debt until he be delivered, yet the property

property of the horse is by the bargain in the bargainer, or buyer; but if he do presently tender me my mony, and I do refuse it, he may take the horse, or have an action of detainment. And if the horse die in my Stable between the bargain and the delivery, I may have an action of debt for my mony, because by the bargain the property was in the buyer.

If a Deed be made of Goods and Chattels, and delivered to the use of the Donee, the property of the Goods and Chattels are in the Donee presently: before any Entry, or agreement, the Donee may refuse them if he will.

If I take a horse of another mans, and sell him; and the owner take him again: I may have an action of Debt for the mony, for the bargain was perfect by the delivery of the horse, *& cavtat Emptor*. Every Contract importeth in it self an assumption: for when one doth agree to pay mony, or deliver a thing upon consideration, he doth as it were, assume and promise to pay and deliver the same, and therefore when one selleth any goods to another, and agreeth to deliver the at a day to come: and the other in consideration thereof, agreeth to pay so much mony on the delivery, or after, in this Case, he may

have

have an action of Debt, or an action on the Caſe upon the aſſumption.

The duty to reſign an Action perſonal, may not be apportioned; as if I ſell my Horſe, and another mans for ten pounds, who taketh his Horſe again, I ſhall have all the mony.

If a man retained a ſervant for 10*l. per annum*, and he depart within the year, he can have no wages: if it were to be paid at two Feaſts, and the man after the firſt Feaſt die, he ſhall have wages but for the firſt Feaſt; therefore men take order for it in their Wils.

By a Contract made in a Fair or Market, the property is altered; Except it be to the King; ſo that the buyer know not of the former property, and do pay tole, and enter it; and thoſe things as thereupon ought to be done, it muſt be on the Market, and at the place where ſuch things are uſually ſold, as Plate at the Goldſmiths ſtall, and not in his Inner ſhop.

In Exchange of a Horſe for a Horſe, or ſuch like, the bargain is good without giving of day, or delivery.

If a thing be promiſed by way of recompence for a thing that is paſt; it is rather an accord than a contract; & upon an accord, there lieth no account, but he unto whom the promiſe is made, may have charge, by reaſon of the

the promiſe, which he hath alſo performed; then he ſhall have an account for the thing promiſed, though he that made the promiſe have no profit thereby; as if a man ſay to another man, heal ſuch a poor man, or make ſuch a high-way, &c.

The intent of the party ſhall be taken according to the Law, as if a man retain a ſervant and do not ſay one year, or how long he ſhall ſerve him, it ſhall be taken for one year, according to the Statute.

In all contracts he that ſpeaketh obſcurely, or ambiguouſly is ſaid to ſpeak at his own peril, and ſuch ſpeeches are to be taken ſtrongly againſt himſelf.

CHAP. XLIII.

Of Lending and Reſtoring.

IF Mony, Corn, Wine, or ſuch other things, which cannot be redelivered, be occupied or borrowed, if it periſh, it is at the peril of the borrower.

But if a Horſe, or a Cart, or ſuch other things, as may be uſed, and delivered again, be uſed in ſuch manner as they were lent, if they periſh, he that oweth them ſhall bear the loſs, if they periſh not through the de-

fault

fault of him that did borrow them, or that he did make a promiſe at the time of delivery, to redeliver them ſafe again. If they be occupied in any other wiſe then according to the lending, in what wiſe ſoever it periſh; if it be not in default of the owner, he that did borrow them, ſhall be charged with them in Law and Conſcience.

If a man have goods to keep to a certain day, he ſhall be charged, or not charged after as default or defaults is in him.

But if he have any thing for keeping them ſafe, or make promiſe to redeliver them, he ſhall be charged with all chances that may fall becauſe of his promiſe.

If a man find goods of another mans, if they be hurt or loſt by the negligence of him that found them he ſhall be charged to the owner.

If a common Carrier go by waies that be dangerous for robbing, and will drive by night, or other unfit times, and is robbed; or if he do overcharge his Horſe, or driveth ſo that his ſtuff fall into the water, or otherwiſe be hurt by his default, he ſhall be charged by his default.

And if a Carrier would percaſe refuſe to carry, unleſs a promiſe were to him, that he ſhall not be charged with any ſuch miſdemeanour, that promiſe were void. Every

Every Inholder is bound by the Law, *bona & Catella* of his Gueſt to keep in ſafety, ſo long as it is within the Inn, if the Gueſt did not deliver them unto him, nor acquaint him with them.

He ſhall not be charged if the Servant or Companion of the Gueſt do imbezel them; or if the Gueſt do leave them in the outward Court.

The Oſtler ſhall not anſwer for the Horſe that is put to paſture at the requeſt of the Gueſt: but if he do it of his own head, he ſhall.

If any man offer to take away my Goods, I may lay my hands upon them, and rather beat him, then ſuffer him to take or carry them away.

CHAP. XLIV.

How far other mens Contracts and miſdemeanours do bind us.

A MAN ſhall be bound by many Treſpaſſes of his wife, but not to ſuſtain corporal puniſhment for it.

For Murder, Felony, Battery, Treſpaſs, borrowing or receiving of mony in his Maſters name, by a Servant, the Maſter ſhall not be charged unleſs it be done by his command, or came to his uſe by his aſſent. If

If I command one to do a Treſpaſs, I ſhall be a Treſpaſſor, or otherwiſe if I do but conſent: There is no acceſſary in Treſpaſs.

We ſhall be charged if any of our family lay or caſt any thing into the high way, to the noiſance of his Majeſties Liege People.

Every man is bound to make recompence, for ſuch hurt as his beaſts ſhall do in the corn or graſs of his neighbour, though he knew not that they were there; and for his Dogs, Beares, *&c.* if they hurt the goods or Chattel of any other, for that he is to govern them.

A man ſhall not be charged by the contract of his wife or his ſervant, if the thing come to his uſe, having no notice of it: But if he command them to buy, he ſhal be charged though they come not to his uſe, or had notice therof.

If a Wife or Servant uſe to buy or ſell, if he ſell his Maſters horſe, and exchange his Oxe for Wheat that cometh to his Maſters uſe, his Maſter may not have an action of Treſpaſs for it, but he ſhall be charged for the corn, and the other need not to ſhew that he had warrant to buy for him.

If a man-ſervant that keepeth his ſhop, or that uſeth to ſell for him, ſhall give away his goods, he ſhall have Treſpaſs againſt the Donee.

But

But if I deliver my Goods to another to keep to my uſe, and he do give them away, I ſhall not: for the Donee had notice whoſe goods they were, as in the caſe of the ſervant.

If a man make another his general receiver, which receiveth mony, and maketh an acquittance, and payeth not his Maſter, yet that payment diſchargeth the debtor.

If a ſervant keep his Maſters fire negligently, an action lieth againſt the Maſter: Otherwiſe if he bear it negligently in the ſtreet.

If I command my ſervant to diſtrain, and he doth ride on the diſtreſs; he ſhall be puniſhed, not I.

If a man command his ſervant to ſell a thing that is defective, generally to whom he can ſell it; deceit lieth not againſt him: Otherwiſe if he bid him ſell it to ſuch a man, it doth.

A Contract or a promiſe made to the wife is good, when the husband doth agree, ſo it is to a ſervant; and it ſhall be ſaid to be made to the husband and Maſter himſelf.

If a man taketh a wife that is in debt, he ſhall be charged with her debts, during her life; if ſhe die, he ſhall be diſcharged.

CHAP.

CHAP. XLV.

Wills and Teſtaments.

Having hitherto treated of ſuch contracts as do take effect in the life time of the parties, with their differences, it is now to deal with Inſtruments which take effect after their Deaths; that thoſe things which they have preſerved with care, and gotten with paines in their life, might be left by their poſterity in peace and quietneſs after their Death: of which ſort are laſt Wills and Teſtaments.

There are two ſorts of Wills; Written and Nuncupative.

A Nuncupative Teſtament is when the Teſtator doth by Word onely without writing declare his Will, before a ſufficient number of Witneſſes, of his Chattels onely: for Lands paſſe not but by writing; It may for the better continuance after the making, be put in writing, and proved: But it is ſtill a Teſtament Nuncupative.

A written Teſtament is that, which at the very time of the making thereof is put in writing, by which kind of Teſtament in writing, only Lands and Teſtaments paſs, and not by word of mouth only. Two

Two things are required to the perfection of a Will, by which Lands paſs, *viz.* Firſt writing, which is the beginning Secondly, the death of the Deviſor, which is the finiſhing.

In a Will of Goods, there muſt be an Executor named; otherwiſe of Lands.

A man may make one Executor or more ſimply, or conditionally for a time, or for parcel of his Chattels.

If no Executor be named, then it ſtill retaineth the name of a laſt Will, and ſhall be annexed to the Letters of Adminiſtration in regard of the Gift.

Gavil kind Lands may be deviſed by cuſtom.

Lands holden { *In Socage tenure* / *Knights Service* } *all 2 parts* { *is deviſable in writing.*

FEAR, Fraud, and Flattery, three unfit accidents to be at the making of a Will.

A Woman may make a Will of the goods of her husband, by his conſent and licence, by Word is ſufficient, and of the goods ſhe hath as Executor, without his conſent; but ſhe cannot give them unto him.

A boy after his age of fourteen, and a maid after her age of twelve, may make a Will of their goods and Chattels by the Civil Law.

The will of the Donor ſhall be alwayes obſerved, if it be not impoſſible, or greatly contrary to the Law.

A Deviſor is intended *Inops Conſilii*, and the Law ſhall be his Counſel, and according to his intent appearing in his Will, ſhall ſupply the defect of his words.

A Prerogative Will is five pound in another Dioceſs.

A man may not traverſe the Probate of a Teſtament, or Letters of Adminiſtration directly, but he may ſay againſt the Teſtament that the Teſtator never made the party his Executor.

CHAP. XLVI.

DEVISES.

A Deviſe ought to be good and effectuall at the time of the death of the Deviſor.

The Deviſee may not enter into the term, or take a Chattell, but by the delivery of the Executor.

But he may ſue for it in Court Chriſtian.

Into Frank-Tenement, or inheritance he may enter.

Deviſees are purchaſees, as if a Leaſe for years be Willed to a man and his Heirs, the Heir ſhall have it; for Heir is a name of purchaſe here.

A

A Reverſion of Lands or Tenements will paſs by the name of Lands and Tenements in a Deviſe.

If a man deviſe all his Lands and Tenements, a Leaſe for years doth not paſs, where he hath Lands in Fee, and alſo a Leaſe there, otherwiſe it will.

If a man deviſe all his goods, a Rent-charge which he had for years will paſs, and all other his perſonal Chattels.

And if a man give all his moveables to one, he ſhall have all his Horſes, Cattel, pans, and perſonal chattels; and all his immoveables: to another, he ſhall have all his Corn growing, and fruit on his Trees, and the chattells reall.

A man may deviſe Lands or goods to an Infant in the mothers belly, or goods to the Church-wardens of *D.*

There is great diverſity where the property is deviſed, and when the occupation is deviſed: A man may deviſe that a man ſhall have the occupation of his Plate, or other chattels during his life, or for years, and if he dy within the term, that it ſhall remain to *M. A.* and it is good, for the firſt hath but the occupation, and the other after him ſhall have the property.

But if a chattel be given to one for life, the

remainder to another, the remainder is void.

For a Grant or Deviſe of a Chattel for an hour, is good for ever; and the Deviſee may diſpoſe of it; but if he do not, the other ſhall have it.

A man may Deviſe his Lands he holdeth in Leaſe, but not his Leaſe, under this condition; Provided, that if the Deviſee die within the term then he ſhall have it.

If a man Will his goods to his Wife, and that after her deſceaſe, his Son and Heir ſhall have the Houſe wherein they are; ſhe ſhall have the Houſe for term of her life, yet it is not deviſed unto her by expreſs words. But it doth appear that his intent was ſo by the words.

If a man willeth his Lands to his wife, til his Son commeth to the age of 21. years, and the woman taketh another husband, and dieth, the husband ſhall have the intereſt.

By a Deviſe a man may have the Fee-ſimple without expreſs words of Heirs, as if Lands be willed to a man for ever, or to have and to hold to him and to his aſſignes, &c.

By Will, Lands may be intailed without the word, Body: as if Lands be given to a man, and to his heirs male, it doth make an eſtate tail.

If a man Will that his Executors ſhall ſell his Lands, the inheritance doth deſcend to the

the Heir; yet the Executors may enter, and enfeoff the Vendee.

But if Lands be given to the Executor to ſell,, and they receive the profits thereof to their own uſe, and do not ſell the ſame in reaſonable time, the Heir may enter.

An Executor may ſell, if the other will not.

If Lands be recover'd againſt Tenant for life or for years, by an action of Waſte, or former title, he may not give his Corn.

If the Cognizee have ſown the Lands, and the Cognizor bring a *ſcire*: he may give the Corn ſown.

If a man Deviſe *omnia bona & Cattalla*, Hawks nor Hounds do not paſs, nor the Deer in the Park, nor the fiſh in the Ponds.

CHAP. XLVII.

Executors.

AN Executor is he that is named and appointed by the Teſtator, to be his ſucceſſor in his ſtead to enter, and to have his goods and chattels, to uſe Actions againſt his Debtors, and Legacies, ſo far as his goods and chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth re-

fuſe, notwithſtanding he that refuſeth may adminiſter at his pleaſure, and the other muſt name him in every action, for every duty due to the Teſtator, and his releaſe ſhall be a good bar: If he do ſurvive he may adminiſter, and not the Executor of him that died, but otherwiſe if all had refuſed.

If one prove the Will in the name of both, he that doth not adminiſter ſhall not be charged.

If the Executor do once any action that is proper to an Executor, as to receive the Teſtators debts, or to give acquittance for the ſame, *&c.* he may not refuſe.

But other acts of charity or humanity, he may do; as to diſpoſe of the Teſtators goods about the funeral, to feed his cattel leſt they periſh, or to keep his goods leſt they be ſtoln, theſe things may every one do, without danger.

When Executors do bring an action, it ſhall be in all their names, aſwel of them that do refuſe, as of other.

But an action muſt be brought againſt him that doth adminiſter only, and he which firſt cometh ſhall firſt anſwer.

An Executor of an Executor, is Executor to the firſt Teſtator. And ſhall have an action of debt, accompt, *&c.* or treſpaſs, as of the goods

of

of the firſt Teſtator carried away, and execution of Statutes and Recognizance, *&c.* St. 25. *Ed.* 5.

The title and intereſt of an Executor, is by the Teſtament, and not by the Probate, but without ſhewing it, they may releaſe the Probate.

The Juſtices will not allow the to ſue actions.

The Executor ſhall have the wardſhip of the Body and Lands of the Ward in Knights ſervice, but not in Soccage, and Leaſes for years, and rent charges for years, Statutes, Recognizances, Bonds, Lands in Executions, Corn upon the ground, Gold, Silver, Plate, Jewels, Mony, Debts, Cattell, and all other goods and Chattels of the Teſtator, if they be not deviſed, and may deviſe them; But if he do will *omnia bona & Catalla ſua*, the goods of the Teſtator paſs not, neither ſhall they be forfeited by the Executor.

An Executor is chargeable for all duties of the Teſtator that are certain, but not for Treſpaſs, nor for receipt for rents, nor for occupation of Lands, as Bailiff or Guardian in Soccage, *&c.* For this is not any duty certain ſo farr as he ſhall have Aſſets; If the Executor do waſte the goods of the Teſtator, he ſhall pay them of his own.

An Executor ſhall not be charged, but

with ſuch goods as come to his hands, but if a ſtranger take them out of his poſſeſſion, they are aſſets in his hands.

If an Executor take goods of another mans amongſt the goods of the Teſtator, he ſhall be excuſed of the taking in Treſpaſs.

Duties by matter of Record ſhall be ſatisfied before duties by ſpecialty, and duties by ſpecialty before charges, and Legacies before other duties.

An Executor may pay a debt or credit of ſome kind, depending the writ, before notice of the action, but not after notice or iſſue joyned.

An Executor may pay debts with his own mony, and retain ſo much of the Teſtators goods, but not Lands appointed to be ſold.

Any of theſe words, *debere, ſolvere, recipere*, borrowed, or any word that will prove a man a debtor or to have the mony; If it be by Bill will charge the Executor, or Adminiſtrator but not the Heir, if he be not named.

CHAP. XLVIII.

ADMINISTRATORS.

AN Adminiſtrator, is he to whom the Ordinary of the place where the inteſtate dwelt, committeth the Teſtators goods, Chattel, credits, and rights.

For

For whereſoever a man dieth inteſtate, either for that he was ſo negligent he made no Teſtament, or made ſuch an Executor as refuſed to prove it, or otherwiſe is of no force; the Ordinary may commit the Adminiſtration of his goods to the Widow, or next of kin, or to both, which he pleaſeth, making requeſt, and revoke it again at his pleaſure.

The Ordinary may aſſign alſo a Tutor to the inteſtates children, to his ſonnes untill twelve year.

But ſo that it may be not a prejudice to him that is the Guardian; and after thoſe years, he or ſhe may reſpectively chooſe their own Curators, and the Guardian may confirm them, if there be not good order taken by their fathers Will.

As if ſuch a Tutor die, the Infant cannot have an Action of account againſt his Executor.

The power and charge of an Adminiſtrator is equal in every point to the power and charge of an Executor: a man may have an action of the caſe againſt the Executor or Adminiſtrator upon the aſſumption of the Teſtator, upon good conſideration, or debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of

the

the will of the Tutor of the Child, to the Childs behoof, until he be of the age of 17. years, and if he be granted for longer time, it is void.

An Administrator *durante minoritate*, may do nothing to the prejudice of the Infant, he may not sell any of the goods of the deceased unless it be upon necessity, as for the payment of debts, or that they would perish; nor let a Lease for a longer time, then whilst he is Executor.

An Infant upon the true payment of a debt due to the Testator, may make an acquittance and it shall be good.

For a Child may better his Estate but not make it worse.

CHAP. XLIX.

Heir.

IF a man die seized of any Lands, and do not dispose of them by his Will they do descend to his Heir, as aforesaid.

And he shall have not onely the Glass, and Wainscot, but any other of such like things affixed to the Free-hold, or ground, as Tables, Dormant, Furnaces, Fats in the Brew-house, or Dye-house; and the

Box

Box or Cheſt wherein the Evidences are, the Hawks and the Hounds, the Doves in the Dove-houſe, the fiſh in the Pond, and the Deer in the Park, and ſuch like.

He ſhall be charged by ſpecialty, for the debts of his Anceſtour, ſo long as he hath aſſets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the Heir for the wrong, or treſpaſs of his Father, but by expreſs words.

Widow.

THE Widow ſhall have all her apparell, her bed, her copher, her chains, borders, and Jewels, by the honourable Cuſtom of the Realm, except her Huband unkindly give any of them away, or be in debt, that it cannot be paid without her Bed, &c. yet ſhe ſhal have her neceſſary apparell.

What things are Arbitrable, and what not.

THings, and Actions perſonal incertain are Arbitrable, as Treſpaſs, taking away of a Ward, &c.

But things certain are not arbitrable, but when the ſubmiſſion is by ſpecialty, if they be not joyned with others incertain, as debt with Treſpaſs.

Matters

Matters concerning the Common-wealth; ſome are not arbitrable as criminal offences, felonies and ſuch like, concerning the crime.

In the ſubmiſſion, three things are to be regarded.

Firſt, that it be made in writing with the parties Covenants, or bonds ſubſequent and ſufficient to bind them, their Heirs, Executors, and Aſſignes to perform the Award, which ſhall be thereupon made, that both the Arbitrators may know their power, & the parties revoke not their power. For all is void that is not contained in the Submiſſion, or neceſſarily depending thereupon; And the Arbitrators labour loſt, if they want means to compell the ſame to be executed.

Secondly, that there be power given to them ſufficient to do all things neceſſary for the ordering of the controverſies, as to appoint times and places for their meetings, to examine and decide the matters committed, and to bring their parties with their proofs, evidences, and witneſſes thither together before them, and to puniſh the place defective, and to expound and correct ſuch doubtful ſentences, and queſtions, as may ariſe upon their Award, afterwards inconvenient to either parties, contrary to Equity, and the Arbitrators good meaning; which inconveniencies

were

were not before by them seen, at the making of the Award, *Temporis filia veritas.*

Thirdly, convenient time and place are to be limited for the yielding up their Award to the parties, or to their assignes.

Six things to be regarded in an Arbitrament.

1 THat it be made according to the very submission, touching the things committed, and every other circumstance.

2 That it be a final end of all controversies committed.

3 That it appoint either party to give or do unto the other something beneficial in appearance at least.

4 That the peformance be honest and possible.

5 That there be a mean how either part by the Law may attain unto that which is thereby awarded unto him.

6 That every party have a part of the Award delivered unto him.

For if it fail in any of these points, then is the whole Arbitrament void, and of none effect.

Examples thereof.

1 AN Award that the parties shall obey the Arbitrament of *A. M.* is void, for power may not be assigned.

1 An Award that any of the parties ſhall be bound or do any other act by the advice of the Arbitrator, is not good except it be in the ſubmiſſion ſo, but that the parties ſhall be bound, or make aſſurance by the advice of counſel, is good.

2 An Award, that the parties ſhall be non ſuited, is not good, becauſe it is no final end, for the party may begin again: that the party do withdraw his ſute, is good.

If the ſubmiſſion be of divers things, and the Award onely of ſome of them, yet is the Award good for that part, as if the ſubmiſſion be of all actions real and perſonal onely, or if it be onely, *de poſſeſſione*.

3 If to ſubmit themſelves to the arbitrament of all treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit, this Award is void.

So it were if one of them ſhould go quite againſt the other, if the ſubmiſſion were not by bond, for an Award muſt be final, obligatory, and ſatisfactory to both parties.

An Award, that either party ſhall releaſe to the other all actions, and that becauſe the one hath treſpaſſed more then the other, he ſhall pay to the other firſt, is good.

In debt or treſpaſs of goods taken, that the

the Defendant ſhall retain part, and the Plaintiff to have the reſt, is not good.

4 An Award, that one of the parties ſhall do an act to any ſtranger, the act is void, if the parties be not bound.

Or if it be that he ſhall cauſe a Stranger to enſeoff, or be bound to the other party, becauſe he hath no means to compel the ſtranger.

5 An Award is void, if it be neither executed, nor any means by Law for the execution thereof, as if it ſhould be awarded that one ſhould pay the other 10. pounds, this is good, for he may recover the ſame by an action of debt. But if it were awarded, the one ſhould deliver to the other an acre of Land, or do ſuch like act Executory, it were void, if it be not delivered ſtraight-way, or proviſion made by bond, or otherwiſe to compell the payment thereof, according to the Award, if the ſubmiſſion be not by ſpecialty.

6 Indentures of Arbitrament muſt be made of ſo many parts, that every perſon may have a part.

Arbitramentum æquum tribuit cuique ſuum.

AN Award is commonly made by Laymen, and ſhall be taken according to their intent, and not in ſo preciſe a form as

Grants,

Grants, or pleadings, but as verdicts, yet the ſubſtance of the matter ought to appear either by expreſs words, or by words equivalent, or by thoſe that do amount thereunto.

But it were good that Awards were drawn up by ſome that is skilful, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

Agreement.

AN agreement is made between the parties themſelves, there muſt be a ſatisfaction made to either party preſently, or remedy for the recompence, or elſe it is but an indeavour to agree.

Tender of mony without payment, or agreement to pay mony at a day to come, is not any ſatisfaction before the day be come, and the mony be paid; it cannot be pleaded in Bar, in an action of Treſpaſs. For that as the other party hath no means to compell the other to pay the mony: So he may refuſe it at the day, if he will, otherwiſe in an Arbitrament; but mony paid at a day, before the Action brought, is a good plea.

FINIS.

A TREATISE OF PARTICULAR ESTATES.

Written
By Sir JOHN DODDRIDGE
KNIGHT.

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A TREATISE OF PARTICULARS

A TREATISE OF PARTICULAR ESTATES.

Particular ESTATES.

A Particular Eſtate is ſuch, as is derived from a general Eſtate, by ſeparation of one from the other; As if a man ſeiſed in Fee ſimple of Lands, or Tenements, doth thereof cheat by gift or grant an Eſtate Tayle, or by demiſe a Leaſe for life, or any Eſtate for years, theſe are in the Donee, or Leaſee. Particular Eſtates in poſſeſſion derived and ſeparated from the Fee ſimple, in the Dedonor, or Leaſor in Reverſion.

Alſo if Lands be demiſed to *A.* for life, the Remainder to *B.* and the Heirs of his body, the Remainder to *C.* and his heirs, the Eſtate for life limited to *A.* the Eſtate Tayle limited to *B.* are particular Eſtates derived *ut ſupra*, and ſeparated in Intereſt from the Fee ſimple; the Remainder given to *C.* albeit the ſame Remainder doth depend upon theſe Particular Eſtates.

And of Particular Eſtates, ſome are created by agreement between the Parties; and the particular Eſtates before ſpecified: And ſome by act of Law; as the eſtate in Tayle *après* poſſibility *de* iſſue extinct, Eſtates by the courteſie of *England*, Dower and Wardſhip; for albeit an Eſtate in Dower, be not compleat until it be aſſigned, which oftentimes is done by aſſent and agreement between parties; yet becauſe the party that ſo aſſigneth the ſame, is compellable ſo to do by courſe of Law, that Eſtate is alſo ſaid to be created by Law; alſo an Eſtate at will is a kind of a particular Eſtate, but yet not ſuch as maketh any Diviſion of the Eſtate of the Leſſor, is ſeiſed; for notwithſtanding ſuch an Eſtate, the Leſſor is ſeized of the Land in this Demeaſure as for Fee in poſſeſſion, and not in Reverſion.

Alſo an Eſtate at will is not ſuch particular

ſar Eſtate, whereupon a Remainder may depend; But of all the Eſtates before mentioned, many fruitful rules, and obſervations, are both generally, and particularly ſo lively ſet forth by the ſaid Mr. *Littleton* in the 1. 2, 3, 4, 5, 6, 7, and 8. Chapters of his firſt Book, which is extant as well in *Engliſh* as in *French*, whereunto I refer you.

Poſſeſſion.

IT is further to be obſerved, that all Eſtates that have their being, are in Poſſeſſion, Reverſion, Remainder, or in Right, but of all theſe, Poſſeſſion is the Principall: there are two degrees of the firſt, and chiefeſt poſſeſſion, *in fait poſſ'*, in Law or Deed, is ſuch as is before ſpoken of: And that is moſt proper to an Eſtate, which is preſent and immediate; but yet ſuch poſſeſſion of the immediate Eſtate, if it be not greater then a tearm doth operate and enure to make the like poſſeſſion of the Free-hold, or Reverſion; when a man is ſaid to have a Tearm, it is to be intended for years, when it is ſaid, a man to have the Fee of Lands, it is alſo to be intended a Fee-ſimple; Poſſeſſion is that poſſeſsion, which the Law it ſelf caſteth upon

a man before any Entry, or Pernancy of the profits: As if there be Father and Son, and the Father dieth ſeiſed of Lands in Fee, and the ſame do deſcend to the Sonne, as his next Heir in this caſe, before any Entry, the ſame hath a poſſeſſion in Law: ſo it is alſo of a Reverſion exportant, or a Remainder dependant upon particular Eſtate, or life; in which caſe, if Tenant for life die, he in Reverſion, or Remainder, before his Entry, hath only poſſeſſion in Law. All manner of poſſeſſions that are not poſſeſſions in *fait*, are only poſſeſſions in Law; and it is to be obſerved then, if a man have a greater Eſtate in Lands then for years, the proper phraſe of ſpeech is, that he is thereof ſeiſed; but if it be for years only, then he is thereof poſſeſſed: But yet nevertheleſs the Subſtantive (poſſeſſion) is proper as well to the one as to the other.

Reverſion.

A Reverſion is properly an Eſtate which the Law reſerveth to the Donor, Grantor, or Leſſor, or ſuch like, which he doth diſpoſe parcel of his Eſtate, when he doth diſpoſe leſs Eſtate in Law then that whereof he was ſeiſed, at the time of ſuch diſpoſition: as if a man ſeiſed

ſeiſed of Lands in Fee, doth give the ſame to another; and the Heires of his body, or if he doth diſmiſs the ſame for life or years; in theſe cafesthe ſame reſerveth the reverſion thereof in Fee, to the Donor, or Leſſor, and his Heires; becauſe he departed not with his whole Eſtate, but only with a particular Eſtate, which is leſs then his Eſtate in Fee; and ſuch Reverſion is ſaid to be expectance upon the particular Eſtate. Alſo if he that is but Tenant for life, for Land, and doth by Deed or paroll, give the ſame *S.* in Tayle, or for tearm of his life, which is a greater Eſtate then he may lawfully diſpoſe; In this caſe the Law reſerveth a Reverſion in Fee, in ſuch Donor, though he were formerly but Tenant for life: and the reaſon thereof is, for that by ſuch unlawfull diſpoſition, which by deed or word, cannot be without livery and ſeiſin, he doth by wrong pluck out the right-full ſtate in Fee, from him that was thereof formerly ſeiſed in Reverſion or Remainder, and thereof by a priority of time, gained in an inſtance, he was ſeiſed of a Fee ſimple, at the time of the execution thereof. But if a man ſeiſed of Lands in Fee ſimple, giveth the ſame to *A*: and his heirs, until *B*. do die without heire of his body; in this caſe the Law reſerveth no Reverſion in the Donor, becauſe

the

the ſtate is diſpoſed to *A.* is a Fee-ſimple, determinable, is in nature ſo great as the ſtate which the Donor had at the time of ſuch gift and conſequently he departed thereby with all his ſtate, and thereby an apparent difference is between a gift made to *A.* and the heirs of his own body, and a gift made to him and his heirs, until *B.* die without heir of his body: for in the one caſe the Donor hath but an Eſtate Tayle, and in the other a Fee-ſimple determinable, hath a poſſibility of Revertor: for if *B.* die without heir of his body, then whether *A.* be living or dead, ſhall revert to the donor, but ſuch poſſibility of Reverſion, for he that hath but ſuch a poſſibility, hath no Eſtate, nor hath he power to give his poſſibility; but in the other caſe, the Donor hath Eſtate in Fee; and therefore he hath power to diſpoſe thereof at his pleaſure.

Remainder.

A Remainder is a remnant of an Eſtate diſpoſed to another at the time of creation of ſuch particular Eſtates, whereupon it doth depend, as if *S.* ſeiſed of Lands in Fee, demiſeth the ſame to *B.* for life, the remainder to *C.* & the heirs of his body, the remainder to *D.* and his heirs; In this caſe

caſe *I. S.* hath a particular Eſtate of the Leſſor, it then alſo diſpoſed to *C.* and *D. ut ſupra*, whereby *B* hath an Eſtate for life, *C.* a Remainder in Tayle, and *D.* a Remainder in Fee, depending in order upon the particular Eſtate in poſſeſſion; and in every Remainder five things are requiſite.

Firſt, That it depend upon ſome particular Eſtate.

Secondly, That it paſs out of the Grantor, Donor, or Leſſor, at the time of the creation of the particular Eſtate, whereon it muſt depend.

Thirdly, That it veſte during the particular Eſtate, or at the inſtant time of the determination thereof.

Fourthly, That when the particular Eſtate is created, there be a Remnant of an Eſtate left to the Donor, to be given by way of Remainder.

Fifthly, That the perſon or body to whom the Remainder is limited, be either capable at the time of limitation thereof, or elſe in *potentia propinqua*, to be thereof capable, during the particular Eſtate; If Lands be given to *I. S.* and his Heirs, the Remainder for default of ſuch Heir to *I. D.* and his Heirs, that Remainder is void, becauſe it doth not depend upon any particular Eſtate; But if

Lands

Lands be given to *I. D.* the life of *I. D.* the Remainder to *I. B.* his Remainder is good, for it is not limited to depend upon a Fee-simple, but upon a particular Estate; which, is onely called an Estate for life of *I. B.* descendable: if Lands be given to *B.* for 11. years, if *C.* do so long live, the Remainder, after the death of *C.* to *D.* in Fee, this Remainder is void, for in this case it cannot pass out of the Lessor at the time of the creation of the particular Estate for years: but if a Lease be made to *B.* for life, the Remainder to the Heirs of *C.* (who is then living) this Remainder is good, upon a contingency, that if *C.* dye in the life of *B.* for that Remainder may well pass out of the Leassor presently without *be jaunce*, without any inconveniency, because onely the inheritance separated from the Free-hold, is an abeyance: if Lands be given for life, with a Remainder to the right Heirs of *I. S.* and the Tenant for life dyeth in the life of *I. S.* this Remainder is void, because it dyed not vest or setled, either during the particular Estate, or at the time of the determination thereof, for until *I. S.* dye, no person is thereof capable, by the name of the Heir.

But if Lands be given to *I. S.* for term of his life, the Remainder to his right Heir,

in

(in the ſingular number) and the Heirs of his body, and after *I. S.* hath iſſue a Son and dyeth, that is a good Remainder, and the Son hath thereby an Eſtate Tayle, for although it were unpoſſible that ſuch Remainder ſhould veſt during the particular Eſtate; becauſe during his life, none could be his Heir, yet it might be and did veſt at the inſtant of his death, which was at the time of his determination of the particular Eſtate.

Concerning the fourth thing, if a man ſeiſed of Lands in Fee, granteth out of the ſame a Rent, or Common to Paſture, or ſuch like things, which before the grant had no being, to *I. S.* for term of life, the Remainder to *I. D.* in Fee, this Remainder is void, becauſe of this thing Granted, there was no Remnant in the grant to diſpoſe. And becauſe ſome heretofore have been of opinion, that albeit the ſame cannot take no effect, as another Grant of a new Rent or Common. *Ut res magis valeat quam operat.*

This is a rule in Law, that a thing enjoyed in a ſuperior degree, ſhall not paſs under the name of a thing, in any inferior degree; and therefore if Lands be given unto two perſons, and unto the Heirs of one of them, unto the Husband and Wife, and Heir of the Huſband;

band; and he that hath the Eſtate of Inheritance, granteth the Verſion of the ſame Land to another in Fee, ſuch Grant is void, becauſe the Grantor was thereof ſeiſed in a ſuperiour degree, *viz.* in Poſſeſſion, and not in Reverſion, as appeareth 22 *Ed.* 4. *fol.* 2. & 13. *Ed.* 3. *Brook.* title of Grants, 137.

And concerning the firſt and laſt thing, if a Leaſe be made of Land, for term of life, the Remainder to the Major and Commonalty of *D.* whereas there is no ſuch corporation therein, being this Remainder is meerly void, albeit the Kings Majeſty by his Letters Patents, do create ſuch Corporations, during the particular Eſtate; for at the time of ſuch Grant, the Remainder was void, becauſe then there was no ſuch body corporate thereof capable, or *potentia propinqua* to be created and made capable thereof, during the particular Eſtate, but the poſsibility thereof, was then forraign and probably intended. The like Law is, if a Remainder be limited to *I.* the Son of *T. S.* who had then no Son, and afterwards during the particular Eſtate, a Son is born who is named *John*, yet this Remainder is void; for at the time of ſuch a Grant, as was not to be probably in tender, that *T. S.* ſhould have any Son of that name.

Alſo

Alſo before the diſſolution of Abbies; if a Leaſe of Land were made to *I. S.* for life, the Remainder to one that then was a Monk, ſuch Remainder was void, for the cauſe before alledged, albeit we were deraigned during the particular Eſtate. But if ſuch Remainder had been limited to the firſt begotten Son of *I. S.* it had been good, and ſhould accordingly have veſted in ſuch a Son afterwards born, during the particular Eſtate.

Rights.

A Right in Land, is either cloathed or naked; a right cloathed, is when it is wrapped in a poſſeſſion, Reverſion, or Remainder; a naked Right, which is alſo moſt commonly called a Right, is when the ſame is ſeparated from the poſſeſſion or Remainder, by diſſeiſin, diſcontinuance, or the deveſting, and ſeparating of the poſſeſſion; as for example, if a Leaſe of Land be made for life to *I. S.* the Remainder to *I. D.* in Fee, in this caſe *I. S.* hath a Right cloathed with a Remainder. But if a ſtranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put *I. S.* out of poſſeſſion

poſſeſſion, ſuch Entry by wrong is called a diſſeiſin, and therefore the poſſeſſion is moved from the Right by reaſon thereof, the Diſſeiſor, is ſeiſed of the Land, and *I.D.* hath alſo the like naked cloathing to the Remainder, by ſuch diſſeiſin, is likewiſe deveſted, and plucked out of him, cannot be reveſted in him, during the Right of ſuch particular Eſtate, unleſſe the poſſeſſion of the particular Tenement but therewith reveſted; which muſt be by this Entry or Recovery by action; and by ſuch Entry of the particular Tenement, or by his Recovery, with execution, the Remainder ſhal be inveſted, as well as the particular Eſtate; and ſo there is a Right in goods and chattels, as well as Lands, Tenements, and Hereditaments, which is alſo cloathed with a poſſeſſion, ſo long as the Rightful proprietor hath the ſame, but if another doth take them from him by wrong, he now hath onely a naked Right to the ſame, which cannot be by him granted, for the cauſe before alledged, but yet he may releaſe his Right there unto him that is thereof poſſeſſed; for the ſame reaſon that is before alledged, if a releaſe of Right, happen to be forfeited to the King, his Highneſſe may grant the ſame by his Prerogative.

FINIS.

CERTAIN OBSERVATIONS CONGERNING A DEED OF FEOFFAMENT:

By *T. H.* Gent.

Cujus posse est velle.

LONDON,
Printed, *Anno Dom.* 1660.

A DEED

CERTAIN OBSERVATIONS CONCERNING A DEED OF FEOFFAMENT.

The Premiſſes.

YOU may find in the Premiſſes, Firſt, The direct nomination, as well of the Feoffor, as of the Feoffee, together with their places of reſidence, habitation or dwelling, and their qualities, eſtates, addition, or condition. Secondly, The certain

expreſſement and ſetting down of the Lands conveyed.

In Com. Norff.) *Comitatus dicuntur à comitando*, of accompanying together, for generally at Aſſizes and Seſſions, thoſe of that County where ſuch Aſſiſes or Seſſions are kept uſe to be impannelled upon Juries, &c. for tryal of iſſue taken upon the fact betwixt party and party, and not thoſe in another County; and it is a common preſumption that all perſons within their Counties take notice of ſuch things as are there publickly don, hereupon it hapneth, that where Lands, &c. lie in divers Counties, if they be conveyed by Feoffament, &c. livery of ſeiſin, muſt be made in every County, where any parcel of the lands, &c. do lie. Otherwiſe it is of two parcels of Land in one and the ſame County. The name County, is in underſtanding all one with Shire, which is ſo called from dividing, and either of them contain a certain portion of the Realm, which is parted into Counties, or Shires, for the better government thereof, and the more eaſie admiſtration of Juſtice; hence it cometh to paſſe, that there is no parcel of this Kingdom, which lieth not within the circuit or precinct of ſome County or Shire. There are reckoned in *England*, 41. Counties or ſhires, and in *Wales* 12. The

County

County of *Northfolk* lying Northward, is so called, in opposition to *Suffolk*, which lyeth towards the South, each one in respect of other gaineth his name.

The addition given to the Feoffer, you may perceive to be *Yeoman*, the Etymology whereof, Mr. *Verstegan* fetcheth from *Gemen*, a word anciently used amongst the *Teutonicks*, which as my Authour saith, signifieth vulgar or common, and so the Letter G. by corruption being turned into the Letter Y. instead of *Gemen*, we say and read *Yemen*, or *Yeomen*. Others, (how probably I dare not affirm) derive it by contraction from these two words, *viz. Young Men*. Famous Master *Cambden*, in his *Britannia*, after he hath reckoned up sundry degrees, both of Nobility, and Gentry, ranketh *Yeomen* in order next Gentlemen, naming them *Ingenuos*, in which sence I apprehend *Yeomen* to be mentioned in a certain Statute made 16. *R.* 2. and in divers other Statutes. And although the derivations of words be conveniently required in the Law, & in every liberal Science, for *ignoratis terminis ignoratur & ars*, yet to use the expression of a learned Divine, though spoken in another case *Melius est dubitare de occultis quam litigare de incertis*: So I must leave you to your own conceit, concerning the o-

riginal of the word *Yeoman*, having onely ſet you down one or two opinions about it; however, I muſt not forget what Sir *Thomas Smith* ſaith in his *Repub. Anglorum*, who very truly and properly calleth him a Yeoman whom the Laws of *England* call *legalem hominem*, that is to ſay a free man born, and M. *Lambert* in his *Eirenarcha*, will excellently inform you who are, and who are not *probi & legales homines*.

There is no ſpecial, but onely a general conſideration expreſſed in the Feoffament, neither of which (as I conceive) is in ſuch caſe abſolutely material (though I may ſay formal) in regard of the notoriety of deeds of Feoffament, *&c.* for livery and ſeiſin (as ſhall be ſaid afterwards) is eſſentially required to make them perfect, which cannot be without the knowledge of others, beſides the parties themſelves, and a Feoffament doth thereby always import a free and willing conſent, otherwiſe peradventure it might have happened in a bargain and ſale, before 27. H. 8. *cap.* 16. for the better illuſtration whereof, take this example: You and another man agree together, that you ſhall give him a certain ſumme of money, for a parcell of Land, and that he ſhall make you an aſſurance of it, you pay him the mony, but he maketh

maketh you no aſſurance; in this caſe although the ſtate of the Land be ſtill in him, nevertheleſs, the equity *in conſcientia boni viri*, is with you, which equity is called the uſe, for which until the 27. *H.* 8. *cap.* 10. there was no remedy (as ſaith Sir *Francis Bacon*) and that very truly, except in the Court of Chancery, but the ſame Statute conjoyneth and annexeth the Land and the uſe together, ſo you by this means for the conſideration have the Land it ſelf, without any further Conveyance, which is called a bargain and ſale. But thoſe grave Senators, and worthy States men who made the ſaid Act of the 27. *H.* 8. *cap.* 10. for the transferring of uſes into poſſeſſion, wiſely foreſeeing that it would be very inconvenient & prejudicious, nay, miſchievous, that mens poſſeſſions ſhould upon ſuch a ſuddain, by the payment of a little mony be tranſported from them, (and perhaps in a Tavern or Ale-houſe, and upon ſtraynable advantages) did diſcreetly provide in the ſame Parliament, the ſaid Act of 27. *H.* 8. *cap.* 16. that Lands, &c. upon the payment of mony as aforeſaid, ſhould not paſs without a Deed indented and inrolled, as by the purport of the ſame Act may appear. Now ſeeing that before the ſaid Act of 27. *H.* 8. *c.* 16. Lands might paſs by bargain

and ſale upon conſideration, without deed indented and inrolled, and might not paſſe without conſideration in ſuch manner, therefore I have heard Lawyers ſay that conſideration is ſtill required in a bargain and ſale, though it be by Deed indented and inrolled, according to the ſame Statute. Sure I am that regularly in a Deed of Feoffament, it is not ſo as formerly is declared, and for the reaſon before expreſſed.

Dediſſe.

The word *dedi* (by force of an act of Parliament made 4. *Ed.* 1. *c.* 4. commonly called the Statute *de Bigamis*) implyeth a warranty to the Feoffee, and his Heirs during the life of the Feoffor, whereupon *Fitz. Herbert* in his *Natura brevium. fa.* 134. *h.* puts a caſe to this effect, *viz.* If a man give Lands to one in Fee, by Deed, by the words *dedi*, *conceſſi*, *&c.* hereby he ſhall be bound to warrant the Lands of the Feoffee, by vertue of thoſe words, and if the Feoffee be impleaded he ſhall have his writ of *Warrant Chart.* againſt the Feoffor, by reaſon of the words *Dedi*, *conceſſi*, *&c.* but not againſt his Heir, for the Heir ſhall not be bound to Warranty, except the Father bind himſelf and his Heirs to Warranty, *&c.* By expreſſe words in the deed; I know ſome alledg, that becauſe as

well

well the Statute, as *Fitzh.* mention not onely *dedi*, but *conceſſi* alſo, therefore the one without the other, implyeth no warranty: to whom it may be anſwered that the Statute it ſelf doth plainly prove againſt them, for the concluſion thereof hath theſe words, *ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare*; and alſo the Teſtimony of Sir *Edward Coke*, may be produced herein, who affirmeth that the Statute of *Bigamis*, *anno* 14. *Eliz.* in the Court of Common Pleas was expounded, as above is mentioned, namely that *dedi* did imply the Warranty, and Mr. *Perkins*, *cap.* 2. ſaith that *dedi* in a deed of Feoffament, comprehendeth in it a Warranty, againſt the Feoffor, and ſo doth not the word *Conceſſi*.

Conceſſiſſe.

I conceive the word *conceſſi* in Feoffaments and Grants (the implyed warranty excepted which *dedi* creates) to be of the ſame effect with *dedi*, & alſo with *confirmavi*, eſpecially in ſome caſes: to which purpoſe hear what *Littleton* ſpeaketh in his chapter of Diſcontinuance, Alſo (ſaith he) in ſome caſes this verb *dedi*, or this verb *conceſſi*, hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as the verb *confirmavi*; as if I be diſſeiſed of a carve of Land, and I make ſuch

a deed *Sciant presentes, &c. quod dedi* to the disseisor, &c. or *quod concessi*, to the said disseisor the said carve, &c. and I deliver onely the deed to him, without any livery of seisin of the Land, this is a good confirmation, and as strong in Law, as if there had been in the Deed this verb *confirmavi, &c.*

Liberasse.

The word *liberavi*, I take to be of the same nature with *Tradidi*, which I have often seen in Feoffaments, whereof it is remarkable, that *Hephron* the *Hittite*, when he assured the field of *Machphelah* to *Abraham*, *Gen.* 32. 11. used the word *trado*: *agrum trado tibi*, that is, to *Abraham*, as *Hieromes* Translation reads it.

Feoffasse.

This word cometh from *feudum* or *feodum*, which signifieth Fee, and is always, or for the most part used in Feoffaments, as participating of the same nature.

Confirmasse.

Concerning the word *confirmo*, somewhat may be gathered from what hath been spoken about the Verb *concessisse*, yet I cannot forget how *Hierome* renders the expresment of the said assurance of the said field of *Machpelah* to *Abraham* for a possession, in these words, *confirmatus est ager, &c. Gen.* 23. 17.

And

And now I come to the ſecond thing conſiderable in the premiſes, namely, the Feoffee whoſe addition is *generoſo*.

Generoſo.

Generoſus, in Engliſh we read Gentleman, which ſome derive from the two French words, *Gentil-homme*, denoting ſuch a one as is made known by his birth, ſtock, and race. Sir *Tho Smith* calleth all thoſe Gentlemen that are above the degree of Yeomen, whence it may be concluded that every Noble-man may be rightly termed a Gentleman, *ſed non viâ verſâ*. Maſter *Cowel* conceiveth the reaſon of the appellation to grow, becauſe they obſerve *Gentilitatem ſuam*, the propagation of their blood, by giving or bearing of armes, wherby they are differenced from others, and ſhew from what family they are deſcended.

Hæredi & aſſignatis ſuis.

Some will have an Heir ſo called, *quia hæret in hæreditate*, or *quia hæret in ſe hæreditas*, but to let ſuch conceits of witty invention paſs, it is certain, that an Heir is ſo called from the Latin word *Hæres*.

Littleton in his Chap. of Fee-ſimple ſaith, that theſe words (his Heirs) onely make the eſtate of inheritance in all Feoffaments, and

and Grants,&c. Sure then it is neceſſary for him that purchaſeth Lands, &c. in Fee-ſimple, to have the Feoffament run to himſelf *& hæredibus ſuis*, for if it run onely to himſelf, *& Aſſignatis ſuis*, although livery and ſeiſin be made accordingly, and agreeable to the deed; yet thereby onely an Eſtate for life ſhall paſs, becauſe there wanteth words of Inheritance: and without livery and ſeiſin in the caſe aforeſaid, onely an Eſtate at Will ſhall paſs. And the reaſon why the Law is ſo ſtrict in this thing (as in many others) for to preſcribe and appoint ſuch certain words to create and make an eſtate of inheritance, is, as Maſter *Plowden* ſaith in his Commentaries, for the eſchewing and avoiding of incertainty, the very Fountain and ſpring, from whence floweth all manner of confuſion and diſorder, which the Law utterly contemneth and abhorreth; what herein hath been ſaid is to be apprehended and underſtood of perſons in, and according to their natural capacities. Yet perhaps an Eſtate of inheritance may ſometime paſs in a Deed of Feoffament, by words, which may have reference, and will relate to a certainty, for *Certum eſt quod certum reddi poteſt*: as for example, You Enfeoff me and my Heirs of a certain piece of Land, to hold to me, & my Heirs, &c. and I re-

enfeoffe

enfeoffe you, in as large, ample, and beneficial manner, as you enfeoffed me: in this caſe (they ſay) you have a Fee-ſimple for the reaſon above expreſſed. So I come next to ſee what obſervations a Deed of Feoffament further affordeth.

Totam ill. pec. tre. cont.

Very neceſſary and convenient it is in deeds of Feoffament, &c. to have the Lands, &c. thereby intended to be conveyed, certainly and expreſly to be ſet down, aſwell how much by Eſtimation in quantity, they do contain, as the quality of the ſame whether Meadow, Paſture, &c. being the ſpecies of Land, which is the *genus*, and the place where, and manner how they exiſt and lye, the better to ſhunne and avoid doubt, and ambiguity, which oftentimes ſtir up occaſions of unkind ſuites and contentions betwixt party and party, I know that Grammarians reading the word *peciam*, will be ready to ſmile, and alledge, that it cannot defend it ſelf *in bello grammaticali*, which I eaſily confeſſe; but what then, what can they inferre from hence? will they therefore utterly condemn the uſe thereof? me thinks they ſhould not, but might give Lawyers leave to ſpeak in their own *Dialect*. But what, if ſome take exceptions at this word, having occaſion to meet

with

with it here, what would they do, ſhould they read the volums of the Law, where inſtead of *bellum*, they ſhall find *guerra*, inſtead of *Sylva*, they ſhall find *boſcus*, and *ſubboſcus*, with a thouſand the like? Surely (as ſaith *Eraſmus*) they might commend or elſe condemn what they could not underſtand, or happily underſtanding, might admire from whence ſuch uncouth words ſhould proceed: for their better information (if I thought they would thank me for my labour) I could tell them that becauſe the *Saxons*, *Danes*, and *Normans*, have all had ſome hand, or at leaſt a finger in our Laws, therefore through the commixion of their ſeveral Languages, it comes to paſs that ſuch difficult termes, and harſh Latine words (if I may ſo call them) are frequently obvious in the books and writings of the Law. And indeed I ſee no reaſon why any man ſhould object or cavil againſt the uſage of ſuch words, though they be not claſſical, ſeeing that as well in the Art of Logick, as in Philoſophy, there are found many words, which they call *Vocabula artis*, vocables of Art, which can no better ſtand, according to the ſtrict rules of Grammar, then the ancient words of Law which cannot be changed without much inconvenience.

Acra.

Acra, in Engliſh an Acre, ſeemeth to come from the Latin word *Ager*; an acre is taken to be a quantity of Land containing 40 perches in length, and 4 in bredth. Maſter *Crompton* in his Juriſdiction of Courts ſaith that a Perch is in ſoms places more, and in ſome places leſs, according to the different uſages in different Countries, and ſo then it muſt needs be of an Acre. But ordinarily, or for the moſt part, a Perch is accounted, and eſteemed to contain 16 foot and a half in length. I take it to be the ſame with that meaſure which we call a Rodde or Pole. A Perch in Law-Latin, is called *pertica*, or *perticata*. See the Ordinance made for meaſuring of Land, *anno* 34. *Ed.* 3. in *Fulton's abr.* titl. Weights and Meaſures.

Quaren.

Quarentena, in Engliſh a Furlong, or Furrow long: *Firlingus*, or *firlingum* is the ſame, it hath been ſometime accepted and taken for the eighth part of a mile, *anno* 35. *El. c.* 6. and I have read that *Firlingus*, or *ferlingus terræ continet* 32. *acras*. The Latins call it *Stadium*.

Ab-

Abbutt.

Abbutto is a verb used by Lawyers, to shew how the heads of Lands do lie, and upon what other Lands or places, denoting for the more certainty, what Lands, &c. are adjacent about the Lands, &c. abbuttalled. And now that I may speak once for all, in regard that Lawyers do use to abbreviate their words in writing, the reason is not as some ignorantly have supposed, because they cannot express their terminations and endings, as they ought to be, but because of the multiplicity of business which they are to go through, oftentimes requiring very suddain dispatch. Yet I could wish that the custom of short writing *alicui scriptori non esset dispendium*, but I fear me too many hereby take occasion to be wilfully ignorant, which otherwise peradventure they would not do.

Militis.

Miles, amongst the Latins, signifieth a Souldier, and in this place, and the like, *Miles* is to be Englished a Knight, which (as Master *Cambden* noteth) is derived from the *Saxon Gnite*, or *Cnight*. The Heraldes will enform you of divers and sundry orders of Knights, if you please to consult with them, or

or their writings thereabouts. A Knight at this day is, and anciently hath been, reputed and taken for one, who for his valour, and proweſſe, or other ſervice for the good of the Common-wealth performed, hath by the Kings Majeſty, or his ſufficient Deputy, on that behali, been as it were lifted up on high, advanced above or ſeparated from the common ſort of Gentlemen: The *Romans* called Knights *Celeres*, and ſometimes *Equites* from the performance of their ſervice upon horſe-back, and amongſt them there was an order of Gentility, ſtiled *Ordo Equeſtris*, but diſtinguiſhed from thoſe they called *Celeres*, as ſeveral *Roman* Hiſtories do plainly teſtifie. The *Spaniards* call them *Cavalleroes*. The *Frenchmen Chivaliers*. And the *Germanes Rieters*, all which appellations evidently enough appear to proceed from the Horſe, which may be ſome teſtimony of the manner of the Execution of their warlike exerciſes. And ſurely it is a very commendable policy in States to dignifie well deſerving perſons with honorable Titles; that others may thereby be ſtirred up to enterprize, and undertake Heroick Acts, and encouraged to the imitation of worthy and renowned vertues.

Ar-

Armig.

Armiger, in Engliſh ſignifieth Eſquire, from the *French Eſcuier*, and perhaps an Eſquire may be called *Armiger quaſi arma gerens*, from his bearing of armes. Ancient Writers and Chronologers, make mention of ſome who are called *Armigeri*, whoſe office was to carry the ſhield of ſome Nobleman. Maſter *Cambden* calls them *Scutiferi*, which ſeemes to import as much, and *homines ad arma dicti*: they are eſteemed and accounted of amongſt us next in Order to Knights.

Clerici.

Clericus, in Engliſh we read Clerke. It hath with us two ſundry kindes of acceptations. In the firſt ſenſe it noteth ſuch a one, who by his practiſe and courſe of life doth exerciſe his pen in any the Kings Majeſties Courts, or elſewhere, making it his calling or profeſſion hereupon you ſhal find in the current of Law, mention made of d vers Clerkes; as for example, The Clerke of the Crown: The Clerk of Aſſize: The Clerk of the Warrants: The Clerk of the Market: The Clerk of the Peace, with many others. In the ſecond ſenſe it denoteth ſuch a one as belongeth to, and

nd is imployed about the Miniſtery of the Church, that being his function: in which ſignification it is to be taken in this place, and in the like; for I, for my part, did never find Clerk in the firſt ſenſe appropriated to any, as an addition ſimply. We have the uſe of the word *Clericus*, from *Clerus*, or *Clerecatus*, ſignifying the Clergy, that is to ſay, the whole number of thoſe, which properly ſo called, or rather ſtrictly, are *de Clero domini, i. e. Hereditate ſive ſorte domini*, for *Clerus* cometh from κλῆρος, a Greek word, ſignifying the ſame with *ſors* in Latine; namely, a lot or portion.

The Habendum.

Habend'.

THe Office of the *Habendum* is to name again the Feoffee, and to limit the certainty of the Eſtate, and it may and doth ſome time qualify the general implication of the eſtate, which by conſtruction and intendment of Law paſſeth in the premiſſes: for an example whereof ſee *Bucklers* caſe in the ſecond Book of Sir *Ed. Cokes* Reports, and *Throgmortons* caſe, in *Plowdens* Commentaries. It is to be noted, that the premiſſes may be inlarged by the *Habendum*, but not abridg-

ed, as it plainly appeareth, aswell in the said case of *Throgmorton*, as in *Worteslies* case reported also by Master *Plowden*, and I have read (as my collections tell me) that it is required of the *habendum*, to include the premisses. Moreover, the *habendum*, as (*W. N.* Esquire, hath it in the treatise of the grounds and maximes of the Law) must not be repugnant to the premisses, for if it be, it is void, and the Deed will take effect by the premisses, which is very worthy of Observation.

The Tenendum.

Tenend'.

THE *Tenendum*, before the Statute of *Quia emptores terrarum*, made 18. *Ed.* 1. was usually *de Feoffatoribus & Heredibus suis & non de capitalibus dominis feodorum, &c. viz.* Of the Feoffers, and their Heirs, and not of the chief Lords of the Fee, *&c.* n whereby there hapned divers inconvenie ces unto Lords, as the losing of their Escheats, or forfeitures and other rights belonging to them by reason of their *Seigniories*, which as the same Statute expresseth it, *durum & difficile videbatur, &c.* Whereupon it was granted, provided and enacted *quod de cætero liceat unicuique libero homini,*

terras ſitas ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam ſeu tenementum illud de capitali domino feodi illius per eadem ſervitia & conſuetudines per quæ feoffator ſuus illa prius de eo tenuit. *L'eſtat' fuit fait* (as ſaith one) *pur l'advantage de Senior'*, which ſtatute was made for the advantage of Lords, and indeed I eaſily believe it. Now it is evident from that which hath been declared out of the ſaid Statute, that at this day the *tenendum*, where the fee ſimple paſſeth, muſt be of the chief Lords of the Fee, &c. for no man ſince the ſaid Statute could convey Lands in Fee, to hold of himſelf, out of which rule the King only (I think) may be excepted, and 'tis not in ſilence to be paſſed over, that where Lands, &c. are conveyed in Fee, though there be no *tenendum* at all mentioned, yet the Feoffee ſhall hold the ſame in ſuch manner as the Feoffor held before, *quia fortis eſt legis operatio*: the Statute ſo determines.

The clauſe of Warranty.

Et ego & hæredes mei, &c. warrantizabimus, &c. defendemus, &c.

Warrantizo, is a verb uſed in the Law, and onely appropriated to make a

Warranty. *Littleton* in his chapt. of Warranty ſaith, *Que ceſt parol, &c.* that this word *Warrantizo*, maketh the Warranty, and is the cauſe of Warranty, and no other word in our Law, & the argument to prove his aſſertion is produced from the form and words uſed in a fine, as if he ſhould ſay, Becauſe the word *defendo*, is not contained in fines to create a Warranty, but the word *Warrantizo* only, *ergo, &c.* which argument deduced and drawn *à majore ad minus*, is very forcible, for the greater being inabled, needs muſt the leſſer be alſo inabled: *Omne majus in ſe continet quod minus eſt, & quod in majori non valet, nec valet in minori.* But certainly *Littleton* is to be underſtood only of an expreſs warranty indeed, and of a warranty annexed to Lands, for there may be, and are other words, which will extend and inure ſufficiently to warrant chattels, &c. and which will imply a warranty in Law, as *dedi, &c.* and *excambium* (as I have heard ſay) implyeth a warranty in Law, which from *Glanvil's vel in excambium*, or *eſcambium datione lib.* 3. *cap.* 1. may receive ſome confirmation: And *Littleton* in his Chapter of *Parceners*, teacheth that partition implyeth a warranty in Law, &c. And leſt ſome may here ſay, that *defendemus* ſtands for a cypher, I will tell them what

Bracton

Bracton declareth of it, speaking about a warranty in deed, from the Feoffor and his heirs, whose words are these: *per hoc autem quod dicit (scilicet Feoffator) defendemus, obligat se et heredes suos ad defendendum si quis velit servitutem ponere rei datae contra formam donationis, &c.* Lawyers in their books make mention of three kinds of Warranties, *viz.* Warranty lineal, Warranty collateral, and Warranty which commences by disseisin. The first is when one by Deed bindeth both himself and his heirs to Warranty, and after Death, this Warranty discendeth to and upon his Heir. The second is in a transverse, or overthwart line, so that the party upon whom the Warranty discendeth, cannot convey the title which he hath in the Land, from him that was the Maker of the Warranty. The third and last is, where a man unlawfully entreth upon the Freehold of another, thereof disseising him, and conveyeth it with a warranty, but the last cannot barr at all. Of these, you may read plentiful and excellent matter and examples in *Littletons* Chapter of Warranty, and Sir *Ed. Coke*, learnedly commenting upon him, to whom for further illustration hereof, I referr you; as also unto Master *Cowels* interpretation of words in the title Warranty, who there remembreth divers

things very worthy obſervation concerning it. Before I come to the fifth part of the Deed of Feoffament, give me leave to obſerve that a Warranty alwaies deſcendeth to the Heir at the Common Law, and followeth the Eſtate (as the ſhadow of the ſubſtance) and whenſoever the Eſtate may, the Warranty may alſo be defeated, and every Warranty (as ſaith Sir *Ed. Coke*) which deſcends, doth deſcend to him that is Heir to him which made the Warranty, by the Common-Law.

And moreover it is to be noted, as may be gathered from what hath been formerly ſaid, that an Heir ſhall not be bound to an expreſs Warranty, but when the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were never bound, the Heir ſhall never be charged. And I remember I have read a caſe in *Br. abr.* 35. *H.* 8. *pl.* 266. to this purpoſe. *Si home dit en ſon garrrantie, Et ego tenementa prædicta cum pertinentiis præfato A. B. le donee warrantizabo, & ne dit, ego & hæredes mei, il meſme garrantrea, mes ſon heire neſt tenus de garranter, pur ceo que* (Heires) *ne ſont expreſſe en le garranty. B. garr.* 50. So will I forbear to ſpeak any further herein, being a very intricate and abſtruſe kinde of learning, requiring the pen of a moſt cunning and experienced Law-

yer

yer, and now I addreſs my ſelf to the fifth orderly, or formal part of the Deed of Feoffament.

The clauſe of in cujus, &c.

In cujus rei teſtimonium.

THis clauſe is added as a preparatory direction to the ſealing of the Deed, for ſealing is eſſentially required to the perfection thereof, becauſe it doth plainly ſhew the Feoffers conſent to, and approbation of what therein is contained, hereupon it will not be much devious or out of the way, to make ſome mention of thoſe faſhions, which in the manner of ſealing, and ſubſcribing of Deeds, have been anciently uſed by our Anceſtors: Some report that the *Saxons* in their time, before the Conqueſt, uſed to ſubſcribe their names to their Deeds, adding the ſign of the croſſe, and ſetting down in the end, the names of certain witneſſes, without any kind of ſealing at all. But when the *Normans* came in, as men loving their own Country guiſes, they *per petit & petit* changed that cuſtom (as alſo many others) which they found here, and *Ingulphus* who was made Abbot of *Croyland*, in *An. Dom.* 1075. ſeemeth to confirm this opinion in theſe words, *Normanni cheirographophorum confectionem eum crucibus aureis, &*

alias signaculis sacris in Anglia firmari solitam, in cera impressa manant. Yet I have read of a sealed Charter in *England* before the Conquest, namely that of St. *Ed.* made to the Abby of Westminster, yet surely this doth not altogether repugne that which hath been formerly said, for I have seen in Master *Fabians* Chronicle, and elsewhere that Saint *Ed.* was educated in Normandy, and tis not unlikely but he might in some things incline to their fashions. The French-men have a proverb, *Rome n'a este bastie tout en un jour*; and we in England use the same, namely Rome was not built in one day: So it cannot be conceived that the Normans in an instant did alter the Saxon custom wholly in this particular, but that it did change by degrees, and perhaps at the first, the King and some nigh unto, and about him did use the impression of a Seal; which I am somewhat perswaded to beleeve, from a certain story which I have heard, concerning *Richard de Lucy*, chief Justice of England, who in the time of *H.* 2. is said to have chidden an ordinary man, because he had sealed a Deed with a private Seal. *Quant ceo pertaine al Roy & Nobilite solement.* In the dayes of *Edward* the third, sealing and Seals were very usual amongst all men, for proof whereof I need not produce any other testi-

mony,

mony, but the Deeds themselves, whereof almost every man hath some. But I must remember that Sir *Ed. Coke*, in the first part of his institutions, *fo. 7. a.* seemeth to overthrow the former opinions about the first using of Seals in England, The sealing of Charters and Deeds, (saith he) is much more ancient then some have imagined, for the Charter of King *Edwin* brother of King *Edgar*, bearing date *An. Dom.* 956. made of the Land called *Feckleæ*, in the Isle of *Ely*, was not onely sealed with his own seal (which appeareth by these words) *Ego Eawindus gratia Dei totius Brittanicæ telluris Rex meum donum proprio sigillo confirmavi*; but also the Bishop of Wincher put to his seal, *Ego Ælfwimus Wintoñ Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi.* And the Charter of K. *Offa*, whereby he gave the *Peter*-pence, doth yet remain under Seal. The either of which two Charters, are much more ancient then that of Saint *Ed.* before mentioned, yet happily there may be some reason probably affirmed why as well King *Edwin* and the Bishop of Wincheſter, as *Offa*, who was King of *Mercia* about the year 788. did annex their Seals to their Charters, which no King of England or Nobleman did before or after them, (except Saint *Ed.*) until the comming in of the

Con-

Conquerour, that ever I could learn; hear, or read of, in any Authour. Nevertheleſſe, I muſt of neceſſity leave the ſearch of ſuch reaſon to others better ſtudied in the Commentations and alterations of perſons, times, and cuſtomes then I my ſelf, however I never heard any one deny, but that the frequent uſe of ſealing Deeds did commence in the time of *Ed.* 3. and was not ordinarily uſed amongſt private men until then, as hath been formerly touched.

Of the Date.

Dat'.

IN this clauſe the Stile of the King at large, the year of his Reign, and the year of our Lord God, according to the computation and account of the Church of England, together with the day of the moneth are expreſſed. In former times Deeds were often made without Date, and that of purpoſe, that they might be alledged within the time of preſcription, as Sir *Ed. Coke*, in his ſaid Book of Inſtitutes, *fo.* 6. very worthily obſerves, and moreover that the date of Deeds, was commonly added in the Reign of *Ed.* 2. and *Ed.* 3. and

3, and so ever since, to whom I refer you who in the place last quoted, hath very excellent matter and observations thereabouts. And thus to perform what I promised, I will speak a word or two concerning Livery of Seisin, and so conclude.

Livery of Seisin.

LIvery of Seisin is a ceremony in Law, used in the conveyance of an Estate of Freehold at the least in Lands and other things corporeal: but in a Lease for years, at will, &c. Livery of Seisin is not required, it being onely a Chattel and no Free-hold. By Livery of Seisin, the Feoffor doth declare his willingnesse to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made known and manifest. The Author of the new Termes of the Law, saith that it was invented as an open and notorious thing, by means whereof the Common people might have knowledge of the passing or alteration of Estates from man to man, that thereby they might be the better able to try in whom the right and possession of Lands and Tenements were

if they should be impannelled on Juries, or otherwise have to do concerning the same. The usual and common manner in these daies of delivering of Seisin, I know to be so frequent, that of no purpose I will omit it: But I pray you note with me before I make an end, that Livery of Seisin is of 2. sorts, *viz.* Livery of Seisin in Deed, and Livery of Seisin in Law, which is sometime termed Livery of Seisin within the view. Livery of Seisin within the view cannot be good or effectual, except the Feoffee doth enter into the Lands, &c. Whereof the Livery of Seisin was made unto him in the life time of the Feoffor; & it is not to be passed over in silence, that a Livery in Law may sometimes be perfected by an entry in Law, as if a man maketh a Deed of Feoffament, and delivers Seisin within the view, the Feoffee dares not enter for fear of death, but claimes the same, this shall vest the Freehold and inheritance in him, to which effect you may see the opinion of certain Justices, 38. *Assis. Pl.* 23. upon a verdict of Assize in the County of *Dorc.* And I conceive that this vesting of a new Estate, in the said case in the Feoffee, making his claim where he dares not enter, stands upon the same reason, for (*contrariorum eadem est ratio*) that the revesting of an ancient Estate and Right in the disseisee

feisee doth by such claim, whereof you may read plentifully in *Littleton* his Chapter of *Continuall Claim.* It is worth the observation that no man can constitute another to receive Livery for him, within the view, nor yet to deliver (as I have heard my Master say) for none can take by force or vertue of a Livery in Law, but he that taketh the Free-hold himself, *& è contra.* Otherwise it is to take and give Livery of Seisin in Deed, for there aswell the Feoffee in the one case may ordain and make his Attorny, or Attorneys in his name and stead, to take Livery, as the Feoffor in the other case to give Livery, *Concurrentibus iis quæ in jure requiruntur.* And now let Delivery of the Deed to be added to the sealing thereof, and the state executing of the Lands thereby conveyed, and then I presume none will refuse to allow that every thing hath been named, which is essentially required to the perfection of a bare Deed of Feoffament, and although I have mentioned the delivery of the Deed in the last place, yet it is not the least thing, or of the least consequence or moment, for after a Deed is sealed, if it be not delivered, *est ad nullum purpose*, it is to no purpose, and the delivery

livery must be by the party himself, or his sufficient warrant: So it may be gathered from what hath been said, that sealing of Deeds without Delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery must concur and meet together, to make perfect Deeds.

I hope such as are present at the Sealing and Delivering of Deeds of Feoffament, and the State executing thereupon, will not forget to subscribe their names, or markes, as witnesses thereof, whereby they may the better be inabled to remember what therein hath been done, if peradventure there shall be occasion to make use of them. And it is not amiss here before I end, to observe that although upon Deeds of Feoffament, &c. it was not usual before the latter end of *Hen.*8. or thereabouts, to endorse or make mention upon such Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my self have many Deeds of Feoffament which do testifie as much) yet it is to be credibly supposed, and not without some manifest probability, that such persons whose names are inserted after a

certain

certain clause in such Deeds, beginning with *his testibus*, were eye-witnesses of all. Thus desiring you to take notice that I have called the said six parts of the Feoffament formal, because they are not absolutely of the essence of Deeds, &c. *manebo in hoc gyro.* I will here conclude, requesting all those to whom any sight hereof shall, or may happen to come, friendly to admonish me of my failings herein: Whereby they shall ever engage me thankfully.

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FINIS.